17-568

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 167.

CASSIUS H. READ, PLAINTIFF IN ERROR,

vs.

THE CITY OF PLATTSMOUTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

**FILED JANUARY 12, 1880.**

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1 Pleas before the honorable Elmer S. Dundy, judge of the district court of the United States for the District of Nebraska, sitting in the circuit court of the United States for the eighth judicial circuit and district of Nebraska, at the term of November, A. D. 1879.

CASSIUS H. READ, PLAINTIFF,
*vs.*
THE CITY OF PLATTSMOUTH, DEFENDANT.

Be it remembered that, on the 18th day of July, 1878, there was filed in the said circuit court by and on behalf of the plaintiff above named a petition in words and figures following, to wit:

*Petition.*

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ, PLAINTIFF,
*vs.*
THE CITY OF PLATTSMOUTH, DEFENDANT.

The petition of the plaintiff in the above-entitled action, represents:

That said plaintiff, Cassius H. Read, is a resident and citizen of the State of New York.

That the defendant, The City of Plattsmouth, is and during all the time hereinafter mentioned has been a municipal corporation, a city of
2 the second class, duly created, organized, and existing under and by virtue of the laws of the State of Nebraska, and a citizen of the State of Nebraska.

That the matter in dispute in said action, exclusive of costs, exceeds the sum of five hundred dollars.

3 1. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendants, which said high-school building was duly constructed with the proceeds of the hereinafter mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 1, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 1, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum, since October 1st, 1877, remains due and wholly unpaid.

4 2. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said

defendant; and the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 2, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the first day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 2, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused..

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum, since October 1st, 1877, remains due and wholly unpaid.

3. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 3, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled, "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing of said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest

coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 3, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

6 4. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor

and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 4, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 4, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum, since October 1st, 1877, remains due and wholly unpaid.

7 5. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the

said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 5, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 5, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth

interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused,

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum, since October 1st, 1877, remains due and wholly unpaid.

8 6. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 6, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 6, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

9 7. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 7, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing

from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 7, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

10 8. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth

every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 8, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 8, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE,
*City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was

duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

11 9. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 9, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 9, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:
M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

12 10. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 10, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond with the interest coupons attached thereto, was put upon the market and

sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 10, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum, since October 1st, 1877, remains due and wholly unpaid.

13 11. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond, and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from

said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 11, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth, in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 11, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was

duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

14 12. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 12, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 12, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

15 13. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high school-building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant'; the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the propor coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 13, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 13, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since Oct. 1st, 1877, remains due and wholly unpaid.

16 14. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond, and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years,

and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 14, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 14, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was

duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

17 15. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character, was marked No. 15, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth, in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed, and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 15, for the construction of a high-school building, in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

18 16. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 16, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 16, for the construction of a high-school building, in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon atttached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

19 17. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existinglaws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth

every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 17, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed, and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 17, for the construction of a high-school building, in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was

duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

20 18. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 18, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 18, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE,
*City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

21 19. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bonds were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 19, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with interest coupons attached thereto, was put upon the market and sold

and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 19, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:
M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

22 20. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value

received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 20, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 20, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

23 21. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years, was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 21, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 21, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

The said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

24 22. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of the said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 22, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 22, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

25 23. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten

years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 23, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 23, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was

duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

26 24. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 24, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 24, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

27 25. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 25, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1877, being the interest due at that date on the bond of the city of Plattsmouth, No. 25, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said fifth interest coupon, the said bond, with the said fifth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fifth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fifth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1877, remains due and wholly unpaid.

28 Wherefore, plaintiff demands judgment against the defendant for the sum of twenty-five hundred dollars with interest thereon at the rate of ten per cent. per annum from October 1st, 1877, besides the costs of this action.

GEO. E. PRITCHETT,
*Plaintiff's Attorney.*

UNITED STATES OF AMERICA,
*District of Nebraska*, ss:

George E. Pritchett, being duly sworn, says he is the attorney for the plaintiff in the within-entitled action, and that he believes the facts stated in the foregoing petition to be true. That said plaintiff is a non-resident of and now absent from the State and district of Nebraska, which is the reason why this verification is not made by him.

GEO. E. PRITCHETT.

Subscribed in my presence and sworn to before me this 18th day of July, A. D. 1878.

WATSON B. SMITH,
*Clerk U. S. Courts,*
By ELMER D. FRANK,
*Deputy.*

EXHIBIT A.

No. .] *Plattsmouth city school bond.* [$1.000.

UNITED STATES OF AMERICA:
*City of Plattsmouth, State of Nebraska:*

Know all men by these presents that the City of Plattsmouth, in the county of Cass, in the State of Nebraska, for value received, promises to pay to , or bearer, the sum of one thousand dollar' within twenty years, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years and said one-tenth an-
29 nually of the principal and the interest on the balance for the next ten years shall be paid annually at the office of the city treasurer aforesaid, on the first day of October of each year, on the presentation of the proper coupons for the same hereto annexed.

By an ordinance passed by the city council of the city of Plattsmouth, September 14th, 1872, this bond and the interest are payable in the city of New York, at the option of the holder. This bond is one of a series of twenty-five of like tenor, date, and amount issued in pursuance of the orders of the city council of the city of Plattsmouth, in the State of Nebraska, for the construction of a high-school building in said city, authorized by a vote of the legal voters of said city of Plattsmouth, and in compliance with the laws of the State of Nebraska, and for the payment of which the good faith, property, and effects of said city are hereby pledged.

In witness whereof, the said city of Plattsmouth has caused this bond to be signed in its behalf by the mayor thereof, attested by the city clerk and the seal of the said city affixed at Plattsmouth, on this first day of October, A. D. 1872.

[SEAL.] M. L. WHITE, *Mayor.*

Attest:
M. B. REESE, *City Clerk.*

Upon the back of said petition appear endorsements in words and figures following, to wit:

No. 332, D. In the circuit court of the United States for the district of Nebraska. Cassius H. Read, pl'ff, vs. The City of Plattsmouth, def't. Petition. Geo. E. Pritchett, pl'ff's att'y. Filed July 18, 1878. Watson B. Smith, clerk.

30 Thereupon on said 18th day of July, 1878, a summons was duly issued in said case, and on the 25th day of July, 1878, was returned and filed; which said summons is in words and figures following, to wit:

UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

The President of the United States of America, to the marshal of the district of Nebraska, greeting:

You are hereby commanded to notify the defendant, The City of Plattsmouth, that it has been sued by Cassius H. Read in the circuit court of the United States for the district of Nebraska aforesaid, at Omaha, that unless it answer by the 19th day of August, A. D. 1878, the petition of the said plaintiff, this day filed against it in the clerk's office of said court, said petition will be taken as true, and judgment rendered accordingly.

You will make due return of this summons on the 29th day of July, A. D. 1878.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 18th day of July, A. D. 1878, and in the 103rd year of the Independence of the United States of America.

[SEAL.] WATSON B. SMITH, *Clerk*,
Attest: By ELMER D. FRANK, *Deputy*.

Attached to said summons is the return of the marshal in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

31 I hereby certify and return that on the 18th day of July, A. D. 1878, I received this summons, and on the 24th day of July, 1878, I served the same upon the within named, The City of Plattsmouth, by Joseph W. Johnson, its mayor, in Cass County, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof.

WILLIAM DAILY,
*United States Marshal for the District of Nebraska.*
By ELLIS L. BIERBOWER,
*Deputy United States Marshal.*

Marshal's costs, $4.70.

Said summons is endorsed as follows:

No. 332, Doc. D. United States circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Summons. Amount claimed of the defendant by the plaintiff, is $2,500.00, and int. at 10 % from Oct. 1st, 1877, and costs. Returned and filed this 25th day of July, 1878. Watson B. Smith, clerk, by Elmer D. Frank, deputy. Geo. E. Pritchett, att'y for pl'ff.

Thereupon afterwards, to wit, on the 10th day of September, 1878, an answer was filed in said case, which said answer is in words and figures following, to wit:

*Answer.*

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ, PLAINTIFF,
*vs.*
THE CITY OF PLATTSMOUTH, DEFENDANT.

Now comes the said defendant, and for answer to the petition of the

plaintiff denies that defendant issued said bonds, or any part thereof, in pursuance of the then existing laws of the State of Nebraska. And
32 defendant avers the fact to be, that there was no law of the State of Nebraska then existing, authorizing the issue of said twenty-five bonds of the sum of one thousand dollars respectively, and that said bonds were issued without authority of law, and that said plaintiff was bound to know, and did know, said facts when he so received said bonds.

Second. Said defendant further saith, that no proper vote of the legal voters of said city of Plattsmouth was had, authorizing the issue of said bonds in this, that there was not and is not a record of said city authorizing or directing that a notice of said election be published as required by law. And that the pretended notice of said election was not published in the manner and for the length of time required by law, in this, that the same was only published four times in the Daily Herald, of Plattsmouth, on the dates following: July 3rd, 5th, 6th, and 8th, 1872, and that said election took place on the 22nd day of July, 1872; and in this, that no registration of the legal voters of said city was had or used at said election. That there was not and is not a record of the result of said vote, and that there was not a publication, as required by law, of the result of said vote, and that there was not and is not a record of the issuing of said bonds, and that plaintiff had knowledge of all said facts when he so received said bonds.

Third. Said defendant for further answer, saith that said act of the legislature entitled "An act to legalize the proceedings of the council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, is void and of no effect in this, that said defendant had no authority to issue said twenty-five *thousand* dollars of school bonds in the first instance. And the legislature could not, by a special law, subsequently passed, confer such power. and could not so confirm
33 and ratify such illegal exercise of authority by said defendant and bind this defendant thereby. And that said defendant did not consent to be so bound by said act of the legislature.

Fourth. That said act is unconstitutional, void, and of no effect, in this, that it is a special law and confers corporate powers upon the defendant.

Fifth. That said act is unconstitutional, null, and void, in this, that it conflicts with section 10 of article 2 of the constitution of Nebraska, in that it contoins more than one subject, and in that the subject of ratifying and legalizing said illegal bonds is not clearly expressed in its title.

R. B. WINDHAM,
JNO. L. WEBSTER,
*Attorneys for Def'ts.*

UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

J. W. Johnson, being first duly sworn, deposes and says, that he is the mayor of the city of Plattsmouth, defendant in the above-entitled action; that he knows the contents of the foregoing answer, and that the facts therein stated are true as he verily believes.

J. W. JOHNSON.

Subscribed in my presence and sworn to before me this 9th day of September, A. D. 1878.

WATSON B. SMITH, *Clerk.*

Said answer is endorsed as follows:

332, D. U. S. circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Answer. Filed Sept. 10, 1878. Watson B. Smith, clerk. Jno. L. Webster, R. B. Windham, att'ys for def't.

34 Thereupon, afterwards, to wit, on the 19th day of September' 1878, a demurrer was filed in said case, which said demurrer is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

Now comes the plaintiff in the above-entitled action and demurs to the answer of the defendant therein, upon the ground that said answer does not state a defense to the causes of action set up in the petition in said action, or to any of them.

GEO. E. PRITCHETT,
*Pl'ff's Att'y.*

Said demurrer is endorsed as follows:

332, D. U. S. circuit court, dist. of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Demurrer to answer. Geo. E. Pritchett, pl'ff's att'y. Filed Sept. 19, 1878. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 3rd day of October, 1878, a petition was filed by said plaintiff in said court, which said petition is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

The plaintiff in the above-entitled action, Cassius H. Read, complains of the defendant therein, The City of Plattsmouth, and says that said plaintiff Cassius H. Read is a citizen and resident of the State of New York;
35 that the defendant The City of Plattsmouth is, and during all the the time hereinafter mentioned has been, a municipal corporation, a city of the second class, duly created, organized, and existing under and by virtue of the laws of the State of Nebraska, and a citizen of the State of Nebraska; that the matter in dispute in said action, exclusive of costs, exceeds the sum of five hundred dollars.

36 1. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the cor-

porate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and the interest on the balance for the next ten years was to be paid annually at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 1, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars, on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 1, for the construction

of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

37 2. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 2, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the

making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 2, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

38 3. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, t he said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to

said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 3, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 3, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

39 4. That heretofore, to wit, on the first day of October, 1872, for

the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 4, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 4, for the construction of a

high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

40 5. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 5, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 5, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

41 6. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 6, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 6, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

42 7. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of

the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 7, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 7, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

43 8. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 8, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fifth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 8, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

44 9. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 9, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 9, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

45 10. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the

city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 10, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 10, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the

maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

46 11. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 11, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon,

being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 11, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

47 12. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 12, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 12, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

48 13. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its cer-

tain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 13, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 13, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

49 14. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond, and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 14, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 14, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment, and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

50 15. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 15, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth, in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed, and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 15, for the construction of a high-school building, in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:
M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

51 16. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-

tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 16, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 16, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable it was

duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

52 17. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 17, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 17, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

53 18. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 18, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from

hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 18, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

54 19. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-

tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bonds were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 19, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 19, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was

duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

55 20. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant, to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant, or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 20, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 20, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

56 21. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 21, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and

sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, entitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 21, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:
M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

57 22. That heretofore, to wit; on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars within twenty

years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 22, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 22, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

58 23. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 23, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred

dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 23, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

59 24. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 24, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An

act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 24, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

60 25. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth

annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 25, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the sixth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct. 1st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1878, being the interest due at that date on the bond of the city of Plattsmouth, No. 25, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor*.

Attest:

M. B. REESE, *City Clerk*.

That after the payment of the second interest coupon, and before the maturity of the said sixth interest coupon, the said bond, with the said sixth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said sixth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said sixth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1878, remains due and wholly unpaid.

61 26. That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high-school building within the corporate limits of said defendant, which said high-school building was duly constructed with the proceeds of the hereinafter-mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf of the city council of the defendant, made, executed, issued, and delivered its certain negotiable bond, whereby it promised to pay, for value received, to , or bearer, the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years was to be paid annually, at the office of the treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the treasurer of the defendant or in the city of New York, at the option of the holder.

That said bond was one of a series of twenty-five bonds of like tenor and effect, and in order to distinguish it from others of the same series and of like character was marked No. 25, a copy of which said bond is filed herewith, made part hereof, and marked Exhibit A.

That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to bona fide purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high-school building.

That by an act of the legislature of the State of Nebraska, 'ntitled "An act to legalize the proceedings of the city council of the city of Plattsmouth in reference to the construction of a high-school building and to authorize the city council to complete the same," passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

That afterwards, to wit, at the proper times, the said defendant assessed, levied, and collected a tax upon the taxable property within the said defendant for the payment of the first, second, & third interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax.

That attached to said bond, among others, was a certain interest coupon, being the fourth interest coupon, which is in the words and figures following, to wit:

Coupon.

$100.] PLATTSMOUTH, NEB., *Oct.* 1*st*, 1872.

The treasurer of the city of Plattsmouth will pay to bearer one hundred dollars on the 1st day of October, 1876, being the interest due at that

date on the bond of the city of Plattsmouth, No. 25, for the construction of a high-school building in pursuance of an order of the city council of said city.

M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

That after the payment of the second interest coupon, and before the maturity of the said fourth interest coupon, the said bond, with the said fourth interest coupon attached thereto, was sold and delivered to the plaintiff for a valuable consideration.

That when said fourth interest coupon became due and payable, it was duly presented at the office of the treasurer of the defendant for payment and payment thereof demanded, which was refused.

That said fourth interest coupon, with interest thereon at the rate of ten per cent. per annum since October 1st, 1876, remains due and wholly unpaid.

62 Wherefore plaintiff demands judgment against the defendant for the sum of twenty-six hundred dollars, with interest on $2,500, at the rate of ten per cent. per annum from October 1st, 1878, besides the costs of this action, and interest on $100 from October 1st, 1876, at the rate of ten per cent. per annum.

GEO. E. PRITCHETT,
*Plaintiff's Attorney.*

UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

George E. Pritchett, being duly sworn, says he is the attorney for the plaintiff in the within entitled action, and that he believes the facts stated in the foregoing petition to be true.

That said plaintiff is a non-resident of and now absent from the State and district of Nebraska, which is the reason why this verification is not made by him.

GEO. E. PRITCHETT.

Subscribed in my presence and sworn to before me this 3rd day of October, A. D. 1878.

WATSON B. SMITH, *Clerk.*

EXHIBIT A.

No. .] *Plattsmouth city school bond.* [$1,000.

UNITED STATES OF AMERICA,
*City of Plattsmouth, State of Nebraska:*

Know all men by these presents that the City of Plattsmouth, in the county of Cass, in the State of Nebraska, for value received, promises to pay to , or bearer, the sum of one thousand dollars within twenty years, one-tenth in ten years and one-tenth every year thereafter until paid, at the office of the treasurer of said city, with interest thereon

at the rate of ten per cent. per annum from date, payable annually.
63 Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal, and the interest on the balance for the next ten years shall be paid annually, at the office of the city treasurer aforesaid, on the first day of October of each year, on the presentation of the proper coupons for the same hereto annexed. By an ordinance passed by the city council of the city *or* Plattsmouth, September 14th, 1872, this bond and the interest are payable in the city of New York, at the option of the holder. This bond is one of a series of twenty-five of like tenor, date, and amount, issued in pursuance of the orders of the city council of the city of Plattsmouth, in the State of Nebraska, for the construction of a high-school building in said city, authorized by a vote of the legal voters of said city of Plattsmouth, and in compliance with the laws of the State of Nebraska, and for the payment of which the good faith, property, and effects of said city are hereby pledged.

In witness whereof the said City of Plattsmouth has caused this bond to be signed in its behalf by the mayor thereof, attested by the city clerk, and the seal of the said city affixed at Plattsmouth, on this first day of October, A. D. 1872.

[SEAL.] M. L. WHITE, *Mayor.*

Attest:

M. B. REESE, *City Clerk.*

Said petition is endorsed as follows:

No. 1, E. U. S. circuit court, dist. of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Petition. Geo. E. Pritchett, pl'ff's att'y. Filed Oct. 3, 1879. Watson M. Smith, clerk.

64 Thereupon, afterwards, to wit, on the 3rd day of October, 1878, a summons was issued in said case, No. 1, E, and on the 14th day of October, 1878, returned and filed; which said summons is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*District of Nebraska, ss.*

The President of the United States of America to the marshal of the district of Nebraska, greeting:

You are hereby commanded to notify the defendant, The City of Plattsmouth, that it has been sued by Cassius H. Read, in the circuit court of the United States for the district of Nebraska aforesaid, at Omaha; that unless it answer by the 4th day of November, A. D. 1878, the petition of the said plaintiff, this day filed against it in the clerk's office of said court, said petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 14th day of October, A. D. 1878.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 3rd day of October, A. D. 1878, and in the 103rd year of the Independence of the United States of America.

[SEAL.] Attest: WATSON B. SMITH, *Clerk.*

Attached to said summons is the return of the marshal, in words and figures following, to wit:

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 3rd day of Oct., 1878, I received this summons, and on the 12th day of Oct., 1878, I served the same upon the within named The City of Plattsmouth, by Joseph W. Johnson, its mayor, in Cass County, State and district of Nebraska, by delivering to and leaving with him a certified copy thereof.

WILLIAM DAILY,
*United States Marshal for the District of Nebraska,*
65 By ELLIS L. BIERBOWER,
*Deputy United States Marshal.*

Marshal's cost, $6.70.

Said summons is endorsed as follows:

No. 1, doc. E. United States circuit court, district of Nebraska. Cassius H. Reed vs. The City of Plattsmouth. Summons. Amount claimed of the defendant by the plaintiff is $2,600.00, and int. on $2,500.00 at 10% from Oct. 1st, 1878, besides the costs of this action, and interest on $100.00 from Oct. 1st, 1876, at the rate of 10 per cent. per annum. Filed Oct. 14, 1878. Watson B. Smith, clerk. Geo. E. Pritchett, pl'ff's att'y.

Thereupon, afterwards, to wit, on the 22nd day of October, 1878, an answer was filed in said case, No. 1, E, which said answer is in words and figures following, to wit:

*Answer.*

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ, PLAINTIFF,
*vs.*
THE CITY OF PLATTSMOUTH, DEFENDANT.

Now comes the said defendant, and for answer to the petition of the plaintiff denies that defendant issued said bonds, or any part thereof, in pursuance of the then existing laws of the State of Nebraska, and
66 defendant avers the fact to be that there was no law of the State of Nebraska then existing authorizing the issue of said twenty-five bonds, of the sum of one thousand dollars respectively, and that said bonds were issued without authority of law. And that said plaintiff was bound to know, and did know, said facts when he so received said bonds.

Second. Said defendant further saith that no proper vote of the legal voters of said city of Plattsmouth was had, authorizing the issue of said bonds, in this, that there was not and is not a record of said city authorizing or directing that a notice of said election be published as required by law; and that the pretended notice of said election was not published in the manner and for the length of time required by law, in this, that the same was only published four times in the Daily Herald of Plattsmouth on the dates following: July 3rd, 5th, 6th, & 8th, 1872, and that said election took place on the 22nd day of July, 1872; and in this, that no registration of the legal voters of said city was had or used at said election; that there was not and is not a record of the result of said vote, and that there was not a publication as required by law of the result of said

vote; and that plaintiff had knowledge of all said facts when he so received said bonds.

Third. Said defendant, for further answer, saith that said act of the legislature, entitled "An act to legalize the proceedings of the council of the city of Plattsmouth in references to the construction of a high-school building, and to authorize the city council to complete the same," passed February 18th 1873, is void and of *of* no effect in this, that said defendant had no authority to issue said twenty-five thousand dollars of
67 school bonds in the first instance, and the legislature could not, by a special law subsequently passed, confer such power, and could not so confirm and ratify such illegal exercise of authority by said defendant and bind said defendant thereby; and that said defendant did not consent to be so bound by said act of the legislature.

Fourth. That said act is unconstitutional, void, and of no effect in this, that it is a special law, and confers corporate powers upon the defendant.

Fifth. That said act is unconstitutional, null, and void in this, that it conflicts with section 19 of article 2 of the then constitution of Nebraska, in that it contains more than one subject, and in that the subject of ratifying and legalizing said illegal bonds is not clearly expressed in its title.

R. B. WINDHAM,
JNO. L. WEBSTER,
*Attorneys for Defendant.*

UNITED STATES OF AMERICA,
*State and District of Nebraska, County of Cass, ss:*

J. W. Johnson, being first duly sworn, deposes and says that he is the mayor of the city of Plattsmouth, defendant in the above entitled action; that he knows the contents of the foregoing answer, and that the facts therein stated are true as he verily believes.

J. W. JOHNSON, *Mayor.*

Subscribed in my presence and sworn to before me this 21' day of October, A. D. 1878.

[SEAL.] WM. L. WELLS, *Clerk.*

Said answer is endorsed as follows:

68 No. 1, E. U. S. circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Answer. Filed Oct. 22, 1878. Watson B. Smith, clerk. R. B. Windham, Jno. L. Webster, att'ys for defendants.

Thereupon afterwards, to wit, on the 31st day of October, 1878, a demurrer was filed in said case No. 1, E., which said demurrer is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

Now comes the plaintiff in the above-entitled action and demurs to the

answer of the defendant therein upon the ground that said answer does not state a defense to the causes of action set up in the petition in said action or any of them.

GEO. E. PRITCHETT,
*Pl'ff's Att'y.*

Said demurrer is endorsed as follows:
No. 1, doc. E. U. S. circuit court dist. of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Demurrer to answer. Geo. E. Pritchett, pl'ff's att'y. Filed Oct. 31, 1878. Watson B. Smith, clerk.

Thereupon afterwards, to wit, on the 30th day of November, 1878, the following proceedings were had in said case No. 332, D, as appears of record on folio 143, journal E, of said court:

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH. } No. 332, D.

It is ordered by the court that this case be and the same is hereby consolidated with case No. 1, E, between the same parties; for trial.

69 *Demurrer* overruled, etc.

Thereupon afterwards, at the May term of said court, on the 23rd day of May, 1879, the following proceedings were had in said case, as appears of record on folio 488, journal E, of said court:

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH. }

This cause being heard on demurrer to the answer, the court does, on consideration, overrule the same. The plaintiff is allowed to reply within 30 days, and cause continued.

Thereupon, afterwards, at the May term of said court, on the 27th day of May, 1879, the following proceedings were had in said case, as appears of record on folio 495, journal E, of said court:

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH. } Nos. 332, D, & 1, E.

Now comes said plaintiff by Geo. E. Pritchett, esq., and excepts to the order of the court overruling the demurrer of said plaintiff to the answer of said defendant. The time given said plaintiff to reply herein is extended 60 days.

Thereupon, afterwards, to wit, on the 1st day of July, 1879, a reply was filed in said case, which said reply is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

Now comes the plaintiff in the above entitled entitled action, and
70 replying to the answer of the defendant filed therein, admits that the vote of the legal voters of the defendant authorizing the issuance of the bonds described in the petition, was had at an election which took place on the 22nd day of July, 1872.

And, further replying to said answer, the plaintiff denies the said answer and each and every allegation thereof, except as hereinbefore specifically admitted.

GEO. E. PRITCHETT,
*Pl'ff's Att'y.*

UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

George E. Pritchett, being duly sworn, says that he is the attorney for the plaintiff in the within entitled action, and that he believes the facts stated in the within reply to be true.

That said plaintiff is a non-resident of and now absent from said district of Nebraska, which is the reason why this verification is not made by him.

GEO. E. PRITCHETT.

Subscribed in my presence and sworn to before me this 1st day of July, 1879.

WATSON B. SMITH, *Clerk.*

Said reply is endorsed as follows:

No. 1, Doc. E, and 332, D. U. S. circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Reply. Geo. E. Pritchett, pl'ff's att'y. Filed July 1, 1879. Watson B. Smith, clerk.

Thereupon, afterwards, at the November term of said court, on the 14th day of November, 1879, the following proceedings were had in said case, as appears of record on folio 713, journal E, of said court:

71 CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH. } Trial Nos. 332, D, and 1, E.

Now come the parties herein by their attorneys. Also come the following named persons as jurors, to wit: W. H. Taylor, H. A. Fisher, F. B. Tiffany, Thos. Wilson, Robert Graham, J. R. Ford, Ferdinand Schroder, W. C. Smith, John Seaton, Wm. Blythestone, Jas. McCardle, Joel T. Griffin, who were duly empanel'ed and sworn according to law, and thereupon, after hearing the evidence, argument, and charge of the court, the jury, in open court, present to the court their verdict, which is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

We, the jury, duly empannel'ed and sworn in above-entitled cause, do find for the defendant.

JOEL T. GRIFFIN, *Foreman.*

Thereupon, afterwards, to wit, on the 15th day of November, 1879, a motion for a new trial was filed in said case, which said motion is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

Now comes the plaintiff in the above-entitled action and moves
72 the court here for an order settting aside the verdict rendered in said action, and granting a new trial therein, for the following reasons, viz:

I. That said verdict is not sustained by sufficient evidence.

II. That said verdict is contrary to law.

III. Because of error of law occurring at the trial and excepted to by the plaintiff in this, that the court instructed and directed the jury to render a verdict for the defendant.

IV. Because said verdict is for the defendant when, according to the law of the land, it should have been rendered for the plaintiff.

GEO. E. PRITCHETT, *Pl'ff's Att'y.*

Said motion is endorsed as follows:

332, D, & 1, E. U. S. circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Motion for new trial. Geo. E. Pritchett, pl'ff's att'y. Filed Nov. 15, 1879. Watson B. Smith, clerk.

Thereupon, afterwards, at the November term of said court, on the 17th day of November, 1879, the following proceedings were had in said case, as appears of record on folio 731, journal E, of said court.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH. } Nos. 332, D, & 1, E.

On this day this cause came on for hearing on the motion of said plaintiff to set aside the verdict and for a new trial of this cause, and was argued to the court by attorneys for the parties herein.

Whereupon it is ordered by the court, the same being advised in the premises, that said motion be, and the same is hereby, overruled. To which ruling of the court said plaintiff, by his attorney, excepts.

73 And the said defendant moving the court for judgment on the verdict, it is considered and adjudged by the court that said defendant go hence without day, and that it recover from said plaintiff its costs, taxed at $ .

Thereupon, afterwards, to wit, on the 18th day of November, 1879, a bill of exceptions was filed in said case, which said bill of exceptions is in words and figures following, to wit:

In the circuit court of the United States for the district of Nebraska.

CASSIUS H. READ
*vs.*
THE CITY OF PLATTSMOUTH.

Be it remembered that upon the trial of this cause in the circuit court of the United States for the district of Nebraska, at the November term thereof, A. D. 1879, the plaintiff introduced evidence tending to prove that he was a bona fide holder and purchaser of the bonds described in the petitions, and had paid for the same the sum of twenty-three thousand four hundred and thirty seven $\frac{50}{100}$ dollars in cash, and had no notice of any informality in their issue, but relied entirely upon the statement of Alvin Saunders, a member of the firm of Saunders, Hardenbergh & King, of New York City, of whom he bought the bonds, that they were legally issued, and that plaintiff had never been in the State of Nebraska.

The defendant offered no testimony upon the trial of said cause. The cause was submitted without argument by either party, whereupon the court instructed and directed the jury to find for the defendant, to which direction and instruction of the court the plaintiff then and there duly excepted, and prayed that this his bill of exceptions in that behalf
74 might be allowed and signed, which is accordingly done, and upon his motion ordered to be made a part of the record in this case.

ELMER S. DUNDY, *Judge.*

Said bill of exceptions is endorsed as follows:

No. 332, D, & 1, E. U. S. circuit court, dist. of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Bill of exceptions. Geo. E. Pritchett, pl'ff's att'y. Filed Nov. 18, 1879. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 15th day of December, 1879, a writ of error was allowed in said case and a citation issued thereon, of which the following are the originals:

75 UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Nebraska, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Cassius H. Read, plaintiff, and The City of Plattsmouth, defendant, a

manifest error hath happened, to the great damage of the said plaintiff in the said cause, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States shall be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, at Omaha, in said district, this 15th day of December, 1879.

WATSON B. SMITH, *Clerk.*

Allowed by—

ELMER S. DUNDY, *Judge.*

(Indorsed:) No. . United States circuit court, district of Nebraska. Cassius H. Read, pl'ff in error, vs. The City of Plattsmouth, def't in error. Writ of error.

76 THE UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

To the City of Plattsmouth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein Cassius H. Read is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Omaha, this 15th day of December, 1879.

ELMER S. DUNDY, *Judge.*

Due personal service of a copy of the above citation is hereby admitted this 27th day of December, 1879.

JNO. L. WEBSTER,
*Att'y for Defendant.*

(Indorsed:) No. . United States circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Citation. Filed Dec. 29, 1879. Watson B. Smith, clerk.

77 UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

By virtue of the foregoing writ of error, and in obedience thereof, I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, in the eighth circuit, do hereby certify that the foregoing folios, from one to 76, contain true and faithful transcripts of all pleadings, process, and proceedings of record and on file in my office as said clerk, and the whole thereof and the endorsements thereon, in the case of Cassius H. Read vs. The City of Plattsmouth; and that a copy of the writ of error and citation has been lodged and the same remain in my said office.

Witness my hand and the seal of said court, at Omaha, this 29th day of December, 1879.

[SEAL.] WATSON B. SMITH, *Clerk.*

78 In the Supreme Court of the United States.

CASSIUS H. READ, PLAINTIFF IN ERROR,
*vs.*
THE CITY OF PLATTSMOUTH, DEFENDANT IN error.

Now comes the plaintiff in error in the above-entitled cause, Cassius H. Read, and complains of the defendant in error in said cause, The City of Plattsmouth, for that the said defendant in error at the November term A. D. 1879, of the circuit court of the United States for the district of Nebraska, recovered a judgment by the consideration of said circuit court against the said plaintiff in error in a certain action then pending in said circuit court, wherein the said Cassius H. Read was plaintiff and the said The City of Plattsmouth was defendant, a copy of the record of the judgment and proceedings in which action, duly certified, is on file in this court and attached to the writ of error heretofore issued herein; and the said plaintiff in error avers that there is error in the said record and proceedings in this, to wit:

I. That the said circuit court erred in overruling the demurrer of the plaintiff to the answers of the defendant.

II. That the said circuit court erred in instructing and directing the jury on the trial of said action to find for the defendant.

79 III. That the said circuit court erred in rendering judgment for said defendant when it ought to have been rendered for the said plaintiff, according to the law of the land.

The said Cassius H. Read therefore prays that the said judgment may be reversed and he be restored to all things he has lost by reason thereof, and that the said circuit court may be directed to render judgment in said action in favor of said plaintiff for the amount due him in the premises.

GEO. E. PRITCHETT,
*Att'y for Pl'ff in Error.*

(Indorsed:) 1879, Octo'r term. No. 1106. U. S. Supreme Court. Cassius H. Read, pl'ff in error, vs. The City of Plattsmouth, def't in error. Assignment of errors & prayer for reversal of judgment. Filed 12 January, 1880.

80 Know all men by these presents that we, Cassius H. Read, of the city of New York, as principal, and Andrew J. Hanscom, of the city of Omaha, as surety, are held and firmly bound unto The City of Plattsmouth in the full and just sum of five hundred dollars, to be paid to the said The City of Plattsmouth, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this fifteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately at a circuit court of the United States for the district of Nebraska, in a suit depending in said court, between Cassius H. Read, as plaintiff, and The City of Plattsmouth, as defendant, a judgment was rendered against the said The City of Plattsmouth; and the said Cassius H. Read, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The City of Plattsmouth, citing it and admonishing to be and appear at a supreme court of the United States, to be holden at Washington, on the second Monday of October next.

Now, the condition of the above obligation is such that if the said Cassius H. Read shall prosecute his writ of error to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CASSIUS H. READ,
By GEO. E. PRITCHETT,
*His Attorney.*
A. J. HANSCOM.

Approved by

ELMER S. DUNDY, *Judge.*

UNITED STATES OF AMERICA,
*District of Nebraska, ss:*

I, Watson B. Smith, clerk of the circuit court of the United States for the district of Nebraska, certify that I have compared the annexed copy of bond in the case of Cassius H. Read vs. The City of Plattsmouth, with the original on file in this office, and that the same is a correct transcript thereof, and of the whole of said original.

In testimony whereof I have caused the seal of said court to be affixed at the city of Omaha, in said district, this 4th day of September, 1880.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsed:) No. 1, E. United States circuit court, district of Nebraska. Cassius H. Read vs. The City of Plattsmouth. Bond. Filed Dec'r 15th, 1879. Watson B. Smith, clerk.

(Indorsed:) Sup. Court U. S., 1880, Oct. term. No. 725. Read vs. City of Plattsmouth. Certified copy of writ of error bond. Filed 9 Sept., 1880.

(Indorsement on cover:) No. 167. Cassius H. Read, plaintiff in error, vs. The City of Plattsmouth. Nebraska C. C. U. S. Filed 12th January, 1880.

17-568

# Supreme Court of the United States.

OCTOBER TERM, 1882.

No. 167.

CASSIUS H. READ,

*Plaintiff in Error,*

*vs.*

THE CITY OF PLATTSMOUTH,

*Defendant in Error.*

# ARGUMENT.

JOHN F. DILLON,

*For the Plaintiff in Error*

BURGOYNE, Law Case Printer, (Law Telephone 587), 57, 59 & 61 Park Street, N. Y.

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# SUPREME COURT OF THE UNITED STATES.

CASSIUS H. READ,
Plaintiff in Error,

vs.

THE CITY OF PLATTSMOUTH,
Defendant in Error.

Argument of John F. Dillon for the Plaintiff in Error.

## Statement of the Case.

The plaintiff (who is also the plaintiff in error) brought two separate actions in the Circuit Court of the United States, for the District of Nebraska, to recover the amount of certain interest coupons upon bonds issued by the defendant city. These two actions were afterwards consolidated (Record, page 77). A copy of the bonds to which the coupons were attached is made a part of the petition or declaration (Record, pages 35 and 73). These bonds are dated on the 1st day of October, 1872; are properly executed and attested by the corporate seal of the city; are negotiable in form; and the principal is by their terms payable, *in installments*, at distant dates.

Each bond contains a *recital* as follows:

> "This bond is one of a series of twenty-five of like tenor, date, and amount, issued in pursuance of the orders of the city council of the City of Plattsmouth, in the State of Nebraska, for the construction of a HIGH SCHOOL BUILDING in said city, authorized by a vote of the legal voters of said City of Plattsmouth, and in compliance with the laws of the State of Nebraska, and for the

payment of which the good faith, property, and effects of said city are hereby pledged."

THE DECLARATION, OR PETITION as it is called in Nebraska, alleged, in respect of each coupon in suit, as follows:

"That heretofore, to wit, on the first day of October, 1872, for the purpose of constructing a high school building within the corporate limits of said defendant, which said school building was duly constructed with the proceeds of the hereinafter mentioned bond and others of the same series and issue, and is now in use within the limits of the said defendant, the said defendant, in pursuance of the existing laws of the State of Nebraska, and pursuant to a vote of the legal voters of the said defendant authorizing the same, as well as the orders in that behalf, the City Council of the defendant made, executed, issued and delivered its certain negotiable bond, whereby it promised to pay, for value received, to or bearer the sum of one thousand dollars, within twenty years from said 1st day of October, 1872, one-tenth in ten years, and one-tenth every year thereafter until paid, at the office of the Treasurer of said city, with interest thereon at the rate of ten per cent. per annum from date, payable annually. Said interest on the whole amount for the first ten years, and said one-tenth annually of the principal and interest on the balance for the next ten years was to be paid annually at the office of the Treasurer of the defendant, on the first day of October of each year, on presentation of the proper coupons therefor annexed to said bond. The principal and interest of said bond were made payable at the office of the Treasurer of the defendant in the City of New York, at the option of the holder. That afterwards, to wit, on the 1st day of October, 1872, the said bond, with the interest coupons attached thereto, was put upon the market and sold and delivered to *bona fide* purchasers for value, the same passing from hand to hand like other negotiable securities, and the proceeds of the same were used by the defendant in the erection of said high school building:

"That by an Act of the Legislature of the State of Nebraska, entitled: 'An Act to legalize the proceedings of the City Council of the City of Plattsmouth, in reference to the construction of a high school building, and to authorize the City Council to

complete the same,' passed February 18th, 1873, the making and issuing said bond was ratified and confirmed and declared to be valid in law.

"That afterwards, to wit, at the proper times the said defendant assessed, levied and collected a tax upon the taxable property within the said defendant for the payment of the first, second, third, and fourth interest coupons attached to said bond, and at the maturity thereof paid the same out of said tax."

The allegations of the petition that these bonds were issued to construct a high school building in the said City of Plattsmouth; that the city sold them, and that their proceeds were used to construct such building; that such building is now in actual use by the city, and that the city paid interest on the bonds for four years are not denied in the answer of the city, and are, therefore, admitted on the record. Compiled Stats. of Nebraska, 1881, p. 547, Sec. 134.

THE ANSWER (pages 36 and 75) is as follows:

*First.* A denial that there is any law of the State of Nebraska, authorizing the issue of the said bonds.

*Second.* That the notice of election to authorize the issue of the bonds was not published for the length of time required by law.

*Third.* That the legalizing act of February 18th, 1873, is unconstitutional and void, in that it is a special law and confers corporate powers upon the defendant contrary to Section 1 of Article 8, of the Constitution of 1866.

*Fourth.* That the said legalizing act of February 18, 1873, is unconstitutional, because it conflicts with Section 1 of Article 2, in that it contains more than one subject, and because the subject of ratifying and legalizing the illegal bonds is not clearly expressed in the title.

THE REPLICATION (Record, page 78) denies each allegation of the answer except the allegation that the bonds were issued in pursuance of an election held on the 22d day of July, 1872.

The cause was tried by a jury. At the trial, as appears by the BILL OF EXCEPTIONS (page 80), the plaintiff introduced evidence tending to prove

> "That he was a *bona fide* holder and purchaser of the bonds described in the petitions (to wit, 25 bonds of $1,000 each), and had paid for the same the sum of $23,437.50, in cash, and had no notice of any informality in their issue, but relied entirely upon the statement of Alvin Saunders, a member of the firm of Saunders, Hardenberg & King, of New York City, of whom he bought the bonds, that they were legally issued, and that plaintiff had never been in the State of Nebraska. The defendant offered no testimony upon the trial of the cause."

The bill of exceptions then proceeds:

> "The cause was submitted without argument by either party, *whereupon the Court instructed the jury to find for the defendant*, to which direction and instruction of the Court the plaintiff then and there duly excepted, and prayed that this, his bill of exceptions in that behalf, might be allowed and signed."

JUDGMENT WAS RENDERED upon this verdict in favor of the defendant, and the plaintiff brings this writ of error to reverse it. It thus appears upon the record:

FIRST. That the plaintiff is a *bona fide* holder for value of the coupons in suit and the bonds to which they are attached.

SECOND. That these bonds were issued by the defendant city for the purpose of building a high school building within its limits.

THIRD. That the bonds were actually negotiated, of the par or nominal value of $25,000, to the plaintiff,

through a banking firm by the defendant city for the sum of $23,437.50, and the proceeds were received by the defendant and used by it in the construction of a high school building within its limits, which is still used by the defendant for school purposes.

FOURTH. That the defendant regularly levied and collected taxes to pay the interest on these bonds for four years, and paid the same.

## CONSTITUTIONAL AND STATUTORY PROVISIONS APPLICABLE TO THE CASE.*

The CONSTITUTION of Nebraska of 1866–7, the one in force when the bonds in suit were issued, contains the following ,and it is believed no other, provisions, applicable to this case:

"ART. I, SEC. 12. No bill of attainder, *ex post facto* law, or any law impairing the obligation of contracts shall ever be passed."

"ART. I, SEC. 16. It shall be the duty of the Legislature to pass suitable laws to encourage schools and the means of instruction."

"ART. II, SEC. 19. No bill shall contain more than one subject, which shall be clearly expressed in its title."

Article VIII, entitled "Corporations," is as follows:

"Section 1. *The Legislature shall pass no special act conferring corporate powers.*

"Sec. 2. Corporations may be formed under general laws.

"Sec. 3. The property of corporations now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

"Sec. 4. The Legislature shall provide for the organization of cities and incorporated villages by general laws; and restrict

*The *first* Constitution of Nebraska was adopted February 9, 1866, and went into effect by proclamation of the President March 1, 1867.

A *new* Constitution went into effect November 1, 1875, but this was after all the Acts here in question were passed.

their power of taxation, assessments, borrowing money, contracting debts and loaning their credits, so as to prevent the abuse of such power."

LEGISLATIVE ENACTMENTS. CITY CHARTER.

The City of Plattsmouth was *originally organized under* a SPECIAL CHARTER, anterior to the State Constitution, approved March 14, 1855 (Laws of 1855, page 366).

Section 2 of said act is as follows:

"Sec. 2. The said city is made a body corporate, and is invested with all the powers and attributes of a municipal corporation."

Section 3 is as follows:

"Sec. 3. The legislative authority of the city is vested in a city council consisting of a Mayor and Board of Aldermen composed of three."

Section 33 is as follows:

"The City Council is authorized to levy and collect taxes not exceeding one-half of one per cent. on all taxable property within the city, according to the laws of the Territory."

Section 41 is as follows:

"SEC. 41. *The Council is authorized to* BORROW MONEY FOR ANY OBJECT IN THEIR DISCRETION, if, at a regularly notified meeting, under a notice stating distinctly the nature and object of the loan, and the amount thereof as nearly as practicable, the voters of the city may determine in favor of the loan by a majority of two-thirds of the legal voters at the said election, and the said loan can in no case be diverted from the specified object."

This charter was amended February 18, 1867 (*Territorial* Laws of 1867, page 78).

Section 41 of the original charter of March 14th, 1855, was then amended so as to read as follows:

> "*The Council is authorized to* BORROW MONEY *for any object in* THEIR DISCRETION, if, at an election, under due notice, stating distinctly the nature and object of the loan, and the amount thereof, as nearly as practicable, the voters of the city shall determine in favor of the loan by a majority of two-thirds of the legal voters at the said election, and the said loan can in no case be diverted from the specified object."

There is *no provision* in the Nebraska Constitution of 1866–7 (the one in force when these bonds were issued) *against* RETROACTIVE LEGISLATION OR REQUIRING SUCH LEGISLATION TO BE BY GENERAL LAWS.

In obedience to the Constitutional requirement that the Legislature should "pass suitable laws to encourage schools and the means of instruction," the Legislature of Nebraska has passed numerous enactments establishing and regulating common schools.

Before the admission of the State, the Territorial Legislature had provided a system of public instruction, and both before and since the organization of the State Government Omaha, Plattsmouth and other cities have been segregated from the general scheme and plan of instruction, and given special powers adapted to their respective wants.

After the Constitution of 1866–7 went into effect prior Acts remained in force, and in the general school laws enacted after the Constitution, many provisions exist whereby *cities* are erected into or continued as *separate school districts*, with all the powers of the other school districts in the State and sometimes with added powers.

The *Territorial* Legislature passed an act in 1867 (Territorial Laws of 1867, p. 38) entitled:

> *An Act to authorize the Common Council of the City of Plattsmouth to raise money to erect a central or high school building and for other purposes."*

This Act, it will be seen, shows that a system of city schools was in existence when the Constitution of 1866–7 went into effect. It enacted, *inter alia*, as follows :

> "SECTION 1. Be it enacted by the Council and House of Representatives of the *Territory* of Nebraska, That the *Mayor and Common Council* of the City of Plattsmouth shall, by virtue of their office, *be Commissioners of the School House Fund in and for said city*, and the Common Council shall perform all the duties of such Commissioners, and shall possess all the rights, powers and authority, and be subject to the same restraints of township boards of education, *for the purpose of raising money required for erecting, purchasing and leasing school houses* and procuring sites therefor, and the fitting up and furnishing thereof.
>
> "Sec. 4. *All common, graded and central schools organized within the City of Plattsmouth* shall be public and free to all children residing within the city. And the Common Council, by a vote of the majority of all the council elected, are hereby authorized to include in the general annual city tax list such additional sum as in their opinion, with the public school moneys for the year, will be sufficient to support the school system of said city.
>
> "Sec. 5. The *Common Council* shall have power and it shall be the duty:
>
> "*First. To designate and purchase or lease in said city all necessary sites for school houses therein, and to improve and fence the same, as to them shall appear suitable and proper.*
>
> "*Third.* To make such by-laws and regulations as they may deem necessary for the proper security and preservation of the *school houses and other property owned by the city for school purposes.*

"Sec. 7. The Mayor and Common Council are hereby authorized and directed to *raise by loan*, in anticipation of the taxes, when deemed necessary, moneys not exceeding in the aggregate, fifteen thousand dollars, required for erecting, purchasing or leasing school houses and procuring sites therefor.

"Sec. 8. That for the purpose of effecting such loan the Mayor and Common Council are authorized to issue the bonds of said city under the seal of the said city, to the amount of fifteen thousand dollars, and no more, and bearing interest at a rate not exceeding 10 per centum per annum, redeemable in one, two, three, four, five and six years.

"Sec. 17. *The title of all school houses, sites, lots, furinture, and all other school property, shall be vested in the city of Plattsmouth.*

"Sec. 20. The general school laws of this Territory in force at the time of the passage of this act, shall, so far as the same are applicable, be taken and construed as part of this act" (Territorial Laws 1867, p. 38).

In the revision of the General School Laws of June 24, 1867 (Laws of the *State* of Neb., 1867, pages 102, 110), it is provided (Section 60):

"Nothing in this act shall be construed so as to interfere with or abrogate any of the rights, privileges and immunities, duties or liabilities conferred or prescribed, *by special enactment*, for any school district comprised within any incorporated city."

Obeying the injunction of the Constitution (Art. 8, Sec. 4) that "The Legislature shall provide for the organization of cities and incorporated villages by general laws;" the Legislature of the *State* of Nebraska passed *general incorporating acts*, and divided cities into cities of the *first* and cities of the *second* class. (See Laws of 1871, p. 26, for powers of cities of the *second* class. Same statute reprinted in General Statutes 1873, page 136).

PLATTSMOUTH *is a city of the* SECOND CLASS. So held in Wheeler vs. The City of Plattsmouth, 7 Neb., 270; 10 Neb., 204; City of Plattsmouth vs. Fitzgerald, 10 Neb., 401.

Cities of the *second* class were incorporated as such under an act approved March 1, 1871 (Laws of 1871, page 26). Same statute reprinted in General Statutes of Nebraska of 1873, page 136.

Section 6 provides:

"Sec. 6. Each city governed by the provisions of this act shall be a body corporate and politic, and shall have power:

"Second. To purchase and hold real and personal property for the use of the city.

"Third. To sell and convey any real or personal property owned by the city, and make such order respecting the same as may be conducive to the interests of the city.

"Fourth. To make all contracts and to do all other acts in relation to property and affairs of the city, necessary to the exercise of its corporate or administrative powers.

"Sixth. To exercise such other and further powers as are and may be conferred by law.

"Sub-division XXXIX. of Sec. 31. TO BORROW MONEY ON THE CREDIT OF THE CITY, and pledge the credit, revenue and public property of the city for the payment thereof; provided that no such money shall be borrowed on any contract hereafter to be made, exceeding two thousand dollars, until the city council shall be instructed so to do by a majority of all the votes cast at an election held in such city for that purpose (General Statutes of Nebraska, 1873, p. 148).

"Section 45. The council of each city governed by this act are required to levy, annually, taxes on all taxable property within the city, in addition to other taxes, and in sufficient amount, for the purpose of paying the interest and coupons as they become due on all bonds of the city now issued by the city, which taxes shall be payable only in cash."

By the other provisions of the General Incorporating Act of 1871, for cities of the second class, Section 31, Sub-division XL., pages 148–49, it was provided that BONDS ISSUED BY CITIES OF THE SECOND CLASS *should not be payable in less than ten or more than twenty years from the date of their issue*, with interest not exceeding ten per cent. per annum, with

interest coupons attached, payable annually or semi-annually. The *time of payment of the bonds in suit* conforms to this requirement.

*Internal Improvement Act.*

A statute of Nebraska, passed February 15, 1869 (Laws of 1869, page 92, reprinted in the General Statutes of Nebraska of 1873, page 448), enacts "that *any* county or *city in the State of Nebraska is hereby authorized to issue bonds to aid in the construction of any railroad, or other work of* INTERNAL IMPROVEMENT, to an amount to be determined by the County Commissioners of such County, or the City Council of such city, not exceeding ten per cent. of the assessed valuation of all taxable property in said county or city," on condition of popular sanction.

Section 2 of said act, as amended in 1870 (Laws of 1870, page 15, General Stats. 1873, p. 448), is as follows:

> "Sec. 2. The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due; provided that an additional amount shall be levied and collected to pay the principal of said bonds when it shall become due; and provided, further, that no tax shall be levied and collected to pay *any of the* PRINCIPAL *of said bonds until after the year* 1880."

It was under the above quoted provisions of the General Incorporating Act of 1871, as to the TIME OF PAYMENT of bonds issued by cities of the second class, or possibly under the last mentioned legislative provisions, that the bonds in suit were made payable at the times and in the manner specified therein (see Record, p. 35, for copy of bond).

The bonds in suit are dated October 1, 1872. They

were sold by the city soon afterwards. While the proceeds of the bonds were yet in the Treasury of the city, the Legislature passed the following

SPECIAL LEGALIZING ACT,

which is reprinted below in full (Session Laws 1873, page 72). It is as follows:

"AN ACT

"*To legalize the proceedings of the City Council of THE CITY OF PLATTSMOUTH, in reference to the CONSTRUCTION OF A HIGH SCHOOL BUILDING, and to authorize the City Council to complete the same.*

"WHEREAS, At a session of the City Council of the City of Plattsmouth, County of Cass, and State of Nebraska, held on the first day of July, A. D., 1872, the proposition of issuing the bonds of said city to the amount of twenty-five thousand dollars, for the purpose of erecting a high school building, was submitted to the voters of said city; and

"Whereas, At a special election held in said city, for the purpose of voting on said proposition, on the twenty-second day of July, 1872, a majority of the votes cast were in favor of issuing said bonds; and

"Whereas, In pursuance of said submission and vote, the City Council of said City of Plattsmouth have issued and sold said bonds, and with the proceeds thereof have proceeded to let the contract for the construction and completion of said house, and have appointed C. F. Driscoll and M. L. White superintendents of the construction of the same, and the work on said building has commenced; therefore,

"*Be it enacted by the Legislature of the State of Nebraska:*

"Section 1. That all acts and proceedings of the City Council of said City of Plattsmouth, in relation to issuing said bonds and letting the contract for the construction of said high school building, and the appointment of said C. F. Driscoll and M. L. White to superintend the construction of the same, and all matters and proceedings connected therewith, which may *in any way affect the validity of said bonds, or of the contract for the construction of the said school-house, be and the same are hereby legalized, confirmed and made valid in law.*

"Section 2. And be it further enacted: That the City Council of the said City of Plattsmouth are hereby authorized and empowered to proceed with the construction of said high school building until its completion; and for that purpose shall have full and exclusive control of all funds realized from the sale of bonds issued by the said City of Plattsmouth for that purpose.

"Section 3. All funds now in the hands of the said City Treasurer of the said City of Plattsmouth, which have been created by the sale of the high school bonds of the said city, shall be applied to the erection of said high school building, and shall not be appropriated or diverted to other use or purpose whatever.

"Section 4. And be it further enacted: That the right and title of the said city of Plattsmouth in and to block number twenty-four in said city, which has heretofore been platted and designated on the recorded plat of said city, as a park, and dedicated to public use, and on which the said school-house is being erected, shall vest and remain in the said City of Plattsmouth for school purposes, and the same shall be held exclusively for said purpose.

"Section 5. This act shall take effect and be in force from and after its passage.

"Approved February 18, 1873.

"Session Laws, 1873, page 72."

On the same February 18, 1873, an act was passed (Laws of 1873, page 73) entitled "An Act *to regulate the* PUBLIC SCHOOLS OF PLATTSMOUTH CITY, and provide means for their support." Sections 1 and 2 are as follows:

"Section 1. That the Mayor and Common Council of Plattsmouth City shall, by virtue of their office, be commissioners of the school-house fund in and for said city, and shall possess all the rights, powers and authority necessary for the purpose of raising money for erecting, purchasing or leasing school houses and procuring sites therefor, and fitting up and furnishing thereof.

"Section 2. In all appropriations of public money for school

purposes, the City of Plattsmouth shall be taken and considered as a precinct in the County of Cass."

Section 5 is as follows :

"Section 5. The Mayor and Common Council of Plattsmouth City are hereby authorized to raise by loan, when deemed necessary to be determined by a majority of the votes cast by the legal voters of said city, a sum not exceeding in the aggregate fifteen thousand dollars, for erecting, purchasing or leasing school houses and procuring sites therefor, and the fitting up and furnishing thereof, and for alteration in, or additions to the present school buildings, or any buildings that shall be purchased or used for that purpose, or for the payment of teachers' wages, and to issue the bonds of said city therefor when so authorized."

By an act approved February 25, 1875 (Laws of 1875, page 208), relating to PUBLIC SCHOOLS IN CITIES OF THE SECOND CLASS *where graded and high schools are, or hereafter may be, established.* Section 26 is as follows:

"SECTION 26. That the Board of Education shall annually, during the month of June, report to the City Council an estimate of the amount of funds required for the support of the schools for the fiscal year next ensuing, the amount of funds required for the purchase of school sites, the erection and furnishing of school buildings, the payment of interest on all bonds issued for school purposes, and the creation of a sinking fund for the payment of such indebtedness, and the City Council is hereby authorized, and, if approved by the City Council, required to levy and collect the necessary amount, the same as other taxes.'

In 1875 a GENERAL VALIDATING ACT, broad enough to embrace the bonds in suit, was passed. The following is the entire text of that act:

"AN ACT

"*To amend an act to incorporate cities of the SECOND class and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned.*

*Be it enacted by the Legislature of the State of Nebraska:*

"§ 1. That no tax heretofore levied in any city of the second class shall be held to be invalid, illegal or irregular because the same was not levied within the time prescribed by the law in force when the same was so levied; nor on account of any mere irregularity in the time or manner of assessment of property, or other irregularity or omission not affecting the equality or substantial justice of such tax, and such taxes shall be inserted in the tax list and shall be collected in the same manner as other general taxes are.

"§ 2. THAT ALL BONDS HERETOFORE ISSUED BY ANY CITY OF THE SECOND CLASS IN GOOD FAITH FOR THE ERECTION OF, OR TO PROCURE THE MEANS FOR ERECTING A HIGH SCHOOL BUILDING WITHIN SUCH CITY, or for heating or furnishing the same, whether issued under a general or special law providing therefor, or any bonds hereafter issued by such city in exchange for any such bonds, SHALL BE LEGAL AND VALID; and any tax heretofore or hereafter levied to pay the interest or a portion of the principal of any such bonds not exceeding five mills on the dollar valuation of the taxable property in the city in any one year, shall be legal and valid.

"§ 3. That in all cases in which cities of the second class have collected and expended, for the use and benefit of such cities, either in works of internal improvement or otherwise, moneys collected from licenses for the sale of intoxicating liquors, such expenditures are hereby declared to be legal, and the same is hereby ratified and confirmed, and such cities of the second class are hereby exonerated from any and all liability therefor.

"§ 4. This act shall take effect and be in force from and after its passage.

"Approved February 25th, 1875." (Laws of Nebraska, 1875, p. 205.)

## Argument.

I shall present what it is deemed necessary to say, in discussing the following propositions:

I. THE DEFENDANT CITY HAD THE POWER TO ISSUE THE BONDS IN SUIT, AND THE SAME ARE VALID IRRE-

SPECTIVE OF THE SPECIAL LEGALIZING ACT OF FEBRUARY 18, 1873, OR THE GENERAL LEGALIZING ACT OF FEBRUARY 25, 1875.

II. IF THE CITY DID NOT HAVE THE POWER TO ISSUE THE BONDS, THE DEFECT IS CURED AND THE BONDS ARE MADE VALID BOTH BY THE SPECIAL *legalizing act* OF FEBRUARY 18, 1873 (*ante*, *p.* 11), AND THE GENERAL *legalizing act* OF FEBRUARY 25, 1875 (*ante*, *p* 14).

## I.

## The city had authority to issue the bonds.

The defendant city had, as we have seen, in its original charter, as well as when it became a city of the second class after the State Constitution, *express power* "TO BORROW MONEY FOR ANY PURPOSE WITHIN ITS DISCRETION"; and the bonds issued by the defendant city, under such power, for school purposes are valid. This is settled by the judgments of this Court. If the cases of Gelpcke vs. The City of Dubuque (1 Wall., 175), and another case under the same name (1 Wall., 220), and Meyer vs. The City of Muscatine (1 Wall., 384), and Rogers vs. Burlington (3 Wall., 654) are examined, they will be seen to be precisely in point.

In the *Dubuque* case, the charter of the city, after conferring the usual powers of a municipal corporation (1 Wall., 202), provided:

> "Sec. 27. That whenever, in the opinion of the City Council, it is expedient to BORROW MONEY FOR ANY PUBLIC PURPOSE, the question shall be submitted to the citizens of Dubuque, the nature and object of the loan shall be stated,

and a day fixed for the electors of said city to express their wishes; the like notice shall be given as in cases of election, and the loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative."

In the *Muscatine* case, the charter, after investing the council with the usual municipal powers, (1 Wall., 385–86), in Section 15 provided as follows:

"Section 15. TO BORROW MONEY FOR ANY OBJECT IN ITS DISCRETION, if sanctioned by a majority of two-thirds of the votes given at the election held for that purpose.'

*The charters of these cities were silent in regard to aiding railroads.* This Court held, in each case, that the authority to borrow money in the one case, "for any public purpose," and in the other, "for any object in its discretion," authorized the issue of bonds of such cities in payment for stock of railroad companies.

The same doctrine was held, and even extended, in the case of Rogers vs. Burlington (3 Wall., 654). The charter of the City of *Burlington*, in its 27th Section, provided as follows:

"That whenever, in the opinion of the City Council, it is expedient to BORROW MONEY FOR ANY PUBLIC PURPOSE, the question shall be submitted to the citizens of Burlington," &c.

The Court held that this power "*to borrow money for any public purpose*" gave the city authority to borrow money to aid a railroad company, and that, as a means of borrowing money, it might issue its bonds and loan them to the railroad company. The Court referred (3 Wall., page 664) to the case of Gelpcke vs. City of Dubuque (*supra*), and remarked that, "although the *opinion of the Court* (in the

Gelpcke case) *contains a reference to other statutes, it was chiefly founded upon the construction of a provision in the charter of that city, expressed in the same words as the provision contained in the charter of the defendants.* Decision also in the case of Meyer vs. City of Muscatine is to the same effect. Unless, therefore, it be assumed that no prior decision of this Court can furnish the rule in a subsequent controversy, it would seem that the present case is controlled by those decisions."

It seems needless to remark that, if under the power "to borrow money for any public purpose" the power to *aid railroads* in this way was included, the power extends to *public schools*, the control of which, within its limits, the Legislature had committed to the defendant city, as an agency of the Territory, and afterwards of the State, in carrying out the mandatory injunction of the State Constitution, "to pass suitable laws to encourage schools and the means of instruction." And it may here be observed that there is no provision in the State Constitution requiring the School Laws of the State to be general.

The power in the *General Incorporating Act* of 1871 (*ante* p. 10) to the defendant, as a city of the *second* class, "TO BORROW MONEY ON THE CREDIT of the city," is without restriction as to amount, when authorized, as in the case at bar, by a majority vote, and as the city had, under existing laws, charge of *schools* within its limits, this power clearly extends to borrowing money for erecting school buildings.

Laws concerning schools relate to *State* functions and duties, as distinguished from those that are

*municipal or corporate*—a distinction well established and very important.

Dillon Munic. Corp. (3d Ed.), §§ 66, 67, 72, 74.

If it were necessary to the plaintiff's case, I should be confident that the proposition could be maintained that laws establishing and regulating common schools, or a system of public instruction, do not relate to "corporate powers," as this phrase is used in the Constitution, even though the State may select public corporate bodies as its agencies to discharge this *State* duty, as distinguished from *municipal* or *corporate* duties proper.

As the exigencies of the present case do not require it, I waive any discussion of the point.

Amongst other legislation which would authorize the issue of these bonds is the INTERNAL IMPROVEMENT ACT of February 15th, 1869 (General Statutes of Nebraska, 1873, page 448, ante p. 10).

The time of payment of the bonds in suit seems to show that this Act might have been regarded by the defendant as one of the sources of authority to them. Legislation authorizing the issue of bonds in aid of "works of internal improvement" is not unusual. A question as to what is an "internal improvement" within the meaning of such an act, was decided by this Court in the Township of Burlington vs. Beasley (94 U. S. Rep., 310), where, though not named in the Internal Improvement Act, *public mills* were regarded as internal improvements.

Mr. Justice HUNT, discussing this subject, says (p. 313):

> "Does such an establishment, to wit, a public mill, fall within the description of 'other works of internal improvement?'

> This expression is usually applied to railroads and canals. To confine it to those two subjects would be to give to the Statute a narrow construction; and that it was not so intended is evident from the Ninth Section, where 'a bridge or other work of internal improvement, except railroads,' is three times spoken of. Similar language is used in the Eleventh Section and Twelfth Sections of the Act. A *State House* is an internal improvement, as is a *county court house*, a *jail*, or a *penitentiary* (Commissioners of Leavenworth Co. vs. Miller, 7 Kan., 479), as much as is a railroad, a canal, or a bridge.' * * * 'Railroads, turnpikes, buildings, bridges, ferries, reclaiming swamps, and the like, are no doubt improvements. If such improvement is within the limits of a town or county, it is internal to such town or county."

If a State house, county court houses, jails and penitentiaries are works of internal improvement, why not a *school house?*

Even if it were *doubtful* if such would be the true construction, yet the decisions of this Court are numerous to the effect *that if the municipal authorities have construed their charter*, or other legislative acts, as giving the power to issue bonds, and such bonds have been issued and are in the hands of *bona fide* purchasers for value, the THE COURT WILL ADOPT THE MUNICIPAL CONSTRUCTION. This Court proceeds upon the principle that a corporation, in a case otherwise doubtful, having acted upon its own construction and drawn others in to take their securities, will be precluded from denying that construction to be the true one.

Van Hostrup vs. Madison City, 1 Wall. 291.
Meyer vs. City of Muscatine, Id., 391.
James vs. Milwaukee, 16 Wall., 159.
Woodhull vs. Beaver County, 3 Wall. Jr., 274.

I now proceed to show

## II.

**That if the defendant City originally did not have the power to issue the bonds they have been VALIDATED by subsequent legislation.**

**And first by the SPECIAL Legalizing Act of February 18, 1873 (see Ante, pp. 11-13, for full text of this Statute).**

*General Legislative competency to pass curative Statutes.*

That this necessary power exists, is, of course, well understood and fully established.

Under the charter of Plattsmouth passed in 1855, Sec. 41 (quoted *ante* p. 6) the power "to borrow money for any object in the discretion" of the City Council was *without limit as to amount*, when authorized by a vote of the people.

And so the power of the defendant as a city of the *second* class under the general incorporating Act of 1871 "to borrow money on the credit of the "city" was as we have seen (*ante* p. 10) *without limit as to amount*, when the council were "so instructed by a majority of all the votes cast at an election held in the city for that purpose. (*Ante* p. 10) The bonds in suit recite that "they are "authorized by a vote of the legal voters of the said city of Plattsmouth and in compliance with the laws of the State of Nebraska." This recital meets the requirements alike of the charter and the general incorporating act.

It may be suggested, however, that the *intermediate* amendment of the city charter passed in 1867 (quoted *ante* p. 8) limited the amount of bonds to

be issued by the defendant city for school purposes to $15,000; and that inasmuch as this issue of bonds was for $25,000, the power of the city was exceeded.

*Even if this were so the bonds to the extent of $15,000 were unquestionably valid*, and so in the worst possible view of the case the only defect in the execution of the power needing to be remedied was that the power had been exceeded to the extent of ten thousand dollars,

And the question now arises whether the express validation by the Legislature of this defect, if defect there be, is effectual.

*The principle is elementary and fundamental* that in the absence of special constitutional restrictions, the *legislature is competent to enact* RETROSPECTIVE STATUTES TO VALIDATE *an irregular or defective execution of a Statutory power or of the powers of a municipal or public corporation.* See cases cited, Dillon Munic. Corp., Sec. 544. There is no such restriction in the Constitution of Nebraska.

> "A retrospective statute," says Judge COOLEY, "curing defects in legal proceedings where they are in their nature irregularities only, and do not extend to matters of jurisdiction, is not void on constitutional grounds, unless expressly forbidden. Of this class are statutes to cure irregularities in the assessment of property for taxation and the levy of taxes thereon; irregularities in the organization or elections of corporations, or the like, where a statutory power has failed of due and regular execution through the carelessness of officers or other cause, irregular proceedings in Courts, &c.
>
> "The rule applicable to cases of this description is substantially the following: If the thing wanting, or which failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the Legislature might have dispensed with by a prior statute, then it is not beyond the power of the Legislature to dispense with it by a subsequent statute. And if the irregularity consists in doing some act, or in the mode or manner of doing some act which the Legislature might have

made immaterial by a prior law, it is equally competent to make the same immaterial by a subsequent law" (Cooley's Const. Lim., page 371).

"Other cases go much further than this, and hold that, although the deed was originally ineffectual for the purpose of conveying the title, the healing statute may accomplish the intent of the parties by giving it effect. At first sight these cases might seem to go beyond the mere confirmation of a contract, and to be at least techinally objectionable, as depriving a party of property without an opportunity for trial, inasmuch as they proceed upon the assumption that the title still remained in the grantor, and that the healing act was required for the purpose of divesting him of it, and passing it over to the grantee. Apparently, therefore, there would seem to be some force to the objection that such a statute deprives a party of vested rights. But the objection is more specious than sound. If all that is wanting to a valid contract or conveyance is the observance of some legal formality, the party may have a legal right to avoid it; but this right is coupled with no equity, even though the case be such that no remedy could be afforded the other party in the Courts. This right which the healing act takes away, in such a case is the right in the party to avoid his contract—a naked legal right which it is usually unjust to insist upon, and which no constitutional provision was ever designed to protect. As the point is put by Chief Justice PARKER, of Massachusetts, a party cannot have a vested right to do wrong; or, as stated by the Supreme Court of New Jersey, "Laws curing defects which would otherwise operate to frustrate what must be presumed to be the desire of the party affected, cannot be considered as taking away vested rights. Courts do not regard rights as vested contrary to the justice and equity of the case.'"

The law as thus stated, was approved by this Court in the case of Randall vs. Kreiger, 23 Wall., 137, 149. Mr. Justice SWAYNE, after referring to many cases in this Court, and in others, says:

"To the objection that such laws violate vested rights of property, it has been forcibly answered that there can be no vested right to do wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the

> wrong is to be presumed. The only right taken away is the right to dishonestly repudiate an honest contract or conveyance to the injury of the other party. Even where no remedy could be had in the Courts the vested right is usually unattended with the slightest equity. There is nothing in the record persuasive to any relaxation in favor of the appellant of the legal principles which, as we have shown, apply with fatal effect to her case. The curative act of 1857 has a strong natural equity at its root. It did for her what she attempted to do, intended to do, and doubtless believed she had done, and for doing which her husband was fully paid."

These principles have been frequently applied to municipal securities in this Court, as well as elsewhere.

Thus, in St. Joseph Township vs. Rogers, 16 Wall., 666, where it appeared that the election at which the subscription was approved was held before the passage of the law authorizing the subscription, the Court said:

> "Argument to show that defective subscriptions of the kind may, in all cases, be ratified where the Legislature could have conferred the power is certainly unnecessary, as the question is authoritively settled by the decisions of the Supreme Court of the State (Illinois), and of this Court in repeated instances." And again: "Mistakes and irregularities are of frequent occurrences in municipal elections, and the State Legislatures have often had occasion to pass laws to obviate such difficulties. Such laws, when they do not impair any contract, or injuriously affect the rights of third persons, are never regarded as objectionable, and certainly are within the competency of legislative authority."

In Thompson vs. Lee County, 3 Wall., 327, 330, the same principle is also asserted and applied. The counties of Lee and Davis in Iowa, issued certain bonds in aid of railroads. The Supreme Court of the State in December, 1866 (McMillen vs. Lee County, 3 Iowa, 311), decided that the election was irregular and did not authorize the issue of the

bonds. After this the Legislature on January 29, 1857, passed an Act, entitled, "An Act legalizing the issue of county, city and town corporation bonds, in the Counties of Lee and Davis."

> This Court in giving judgment said that: "It is not instructive to inquire into the different laws of Iowa under which this power is claimed to exist, because the Legislature of that State, on the 28th of January, 1857, by an Act of confirmation, legalized the issue of these bonds. If the Legislature could authorize this ratification, the bonds are valid notwithstanding the submission of the question to the vote of the people, or manner of taking the vote may have been informal and irregular." "If the Legislature possessed the power to authorize the Act to be done, it could by a retrospective Act, cure the evils which existed, because the power thus conferred had been irregularly executed. The question with the Legislature was one of policy, and the determination made by it was conclusive."

Other instances of CURATIVE ACTS LEGALIZING MUNICIPAL BONDS, SUSTAINED BY THIS COURT, will be found in:

Beloit vs. Morgan, 7 Wall., 619.
City vs. Lawson, 9 Wall., 485.
Campbell vs. Kenosha, 5 Wall., 195; holding that the Legislature may validate an illegal issue of bonds by *implication.*

The Nebraska validating statutes of February 18, 1873, and February 25, 1875, heretofore quoted rest on the plain and clear bases of equity and justice; so plain and clear, indeed, that the sale of these bonds by the city and the use of the money renders it liable to the holder of the bonds, even if the bonds are not binding obligations, *on an implied assumpsit.* This principle was established by this Court in the case of Louisiana vs. Wood, 102 U. S., 294. In that case, the City of Louisiana, having

power to borrow money for the payment of her debts, issued her bonds for this purpose and sold them. They turned out to be invalid, whereupon the holder brought an action of implied assumpsit against the city to recover the amount paid with interest. The right to recover was adjudged by this Court on the broad ground that a muncipal corporation like a natural person is liable to an "action of implied assumpsit upon a consideration which fails," on the principle as stated in Marsh vs. Fulton County (10 Wall., 676), "the obligation to do justice rests upon all persons, natural or artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation."

*Such also is the law in the State of Nebraska*, as as will be seen by reference to the recent case of Clark vs. Saline County, 9 Neb., 516. In that case, the plaintiff constructed a bridge for the county and received payment in lands, the title to which entirely failed; and the county was held liable by the Supreme Court of Nebraska, on an implied assumpsit. That Court cited and approved the case of *Pimental vs. City of San Francisco*, 21 Cal., 362, (where this subject, as respects public corporations, was, at a comparatively early day, considered with exhaustive learning by Mr. Chief Justice FIELD); and the cases of Paul vs. City of Kenosha, 22 Wis., 266; and Bridge Co. vs. Frankfort, 18 B. Mon., 41; and the rule as stated in Dillon Municipal Corporations, sec. 750, 2d Ed., section 938; 3d. Ed.

The case of Paul vs. Kenosha *supra*, referred to by the Supreme Court of Wisconsin, goes so far as to hold that a purchaser from a city corporation of its bonds, *which are wholly void for want of power*

*to issue them*, may recover back from the city the money paid, as upon a failure of consideration; and in such case, the bonds being void, it is not necessary that the plaintiff should offer to return the bonds before bringing suit, it being sufficient to produce them at the trial to be surrendered.

There being, therefore, according to this Court and the Supreme Court of Nebraska, such a clear and indisputable legal obligation, to refund the money received, it would be extraordinary to hold that the Legislature is disabled from validating the bonds themselves by a curative act.

THE CASES ON THE SUBJECT OF THE EXTENT OF LEGISLATIVE CONTROL OVER MUNICIPAL CORPORATIONS are too numerous to refer to, nor is it necessary. It is sufficient to state that it is established law, that the fact that a claim against a municipal or public corporation is not such a one as the law recognizes as of *legal* obligation has often been decided to form no constitutional objection to the validity of a law directing its payment. The cases, if it is desirable to consult them, will be found referred to in Dillon on Municipal Corporations, 3d Ed., in the notes to Sec. 75. It is sufficient to refer, in this Court, to New Orleans vs. Clark, 95 U. S., 644. In that case, where a municipality, after the passage of an Act of the Legislature, which provided that towns and cities should not thereafter "have power to contract any debt without fully providing in the ordinance creating the debt the means of paying the principal and interest," issued bonds without such a provision as the above statute required, and used them in payment of an authorized indebtedness, this Court *held that inasmuch as the bonds represented an equitable claim against the city, it was competent*

*for the Legislature to interfere and require the city to pay them.*

> "The power of the Legislature," says FIELD, J., delivering the judgment of the Court in the case last cited, "to require the payment of a claim for which an equivalent has been received, and from the payment of which the city can only escape on technical grounds, would seem to be clear. * * A very different question," the learned Judge cautiously adds, "would be presented if an attempt were made to apply the means raised [by taxation] to the payment of claims for which no consideration had been received by the city."

THE SPECIAL VALIDATING ACT FIRST CONSIDERED.

The Court will bear in mind that we have here two validating acts; one of 1873, which is *special* (*ante* pp. 11–13), and one of 1875, which is *general* (*ante* pp. 14–15).

Although it is immaterial to the plaintiff whether only one or both of these Acts is valid, yet being of opinion, after reflection, that the *special* Act is sufficient even if there were no general legalizing act, and as an important and to some extent novel question is presented, I will first discuss the validity of the *special* Act.

THE EFFICACY OF THE SPECIAL VALIDATING ACT of 1873, with which we are now dealing, would, I suppose, be unquestioned if it were not for the provision of the State Constitution, "*that the Legislature shall pass no special Act conferring corporate powers.*"

An examination of the different State constitutions shows that this precise constitutional limitation originated in Ohio, and that this identical provision is confined to that State and the States of Kansas and Nebraska, although the later constitutions of several of the States (see foot-note) ordain that pri-

vate, and to some extent public, corporations shall be formed under general laws.*

The Legislature of Nebraska in the Act of February 18, 1873, above set out at length (*ante* pp. 11–13) after reciting the history of this issue of bonds, and while the proceeds of their sale were yet in the treasury of the city, declares that the said bonds "be and the same are hereby legalized, confirmed and made valid in law."

The fundamental inquiry plainly is, whether this is a "special act conferring corporate powers" upon the defendant city, within the meaning of the constitution.

In maintaining the proposition that the act is not in conflict with the constitutional prohibition, I will first present the subject as it rests in my own mind, and then show that the conclusions reached are fully supported by the decisions of those States in which this or cognate provisions have been judicially interpreted.

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* I. The States of *Arkansas*, *California*, *Colorado*, *Florida*, *Illinois*, *Kansas*, *Louisiana*, *Michigan*, *Minnesota*, *Missouri*, *Nebraska*, *Nevada*, *New Jersey*, *Ohio*, *Oregon*, *Pennsylvania*, *South Carolina*, *Tennessee*. *Texas* and *West Virginia* declare in their constitutions that *no corporation for private emolument shall be formed under a special law.*

II. Those of *Indiana*, *Iowa*, *Maryland* and *Wisconsin* except only banks from this principle.

III. Those of *Maine*, *New York* and *North* Carolina except only corporations whose objects cannot be obtained by general law.

IV. The Constitution of *Arkansas* has the provision: "The General Assembly shall pass no special act conferring corporate powers *except* for charitable, educational, penal or reformatory purposes where the corporations created are to be and remain under the patronage and control of the State" (Art. 12, § 2). The Constitution of *Kansas* has the provision: "The Legislature shall pass no special act conferring corporate powers" (Art. 12, § 1). The Constitution of *Nebraska* has the same provision as Kansas (Art. 8, § 1). The Constitution of *Nevada* has the provision: "The Legislature shall pass no special act in any manner relating to corporated powers except for municipal purposes" (Art. 8, § 1). The Constitution of *Ohio* has the provision: "The General Assembly shall pass no special act conferring corporate powers" (Art. 13, § 1).

V. *Kansas*, *Nebraska* and *Ohio* are the only States which contain the identical provision *that the Legislatures thereof shall pass no special act conferring corporate powers.*

What was the object of this constitutional provision? It was as stated by the Supreme Courts of Ohio and Kansas, and by this Court in School District vs. Insurance Co., 101, U. S., 707, to prevent the abuses which resulted from conferring by special legislation, differing and varying powers upon corporate bodies, often at the instance of private persons or localities interested in obtaining unjust advantages or powers unnecessarily liable to abuse.

By legislative usage, and that apathy and indifference which always exist where there is no personal responsibility, it too often happened that if the immediate representatives of a locality desired special legislation, other members consented to it without examination of the merits of what was asked, and frequently upon an understanding, express or implied, of a reciprocation of like favors.

The Constitutional provision was levelled at this mischief, and it sought to remedy it as respects corporatoins by providing for a GENERAL LEGISLATIVE RESPONSIBILITY. You shall not consent, says the Constitution to each member of the Legislature, to the granting of any special charter, nor to any act conferring corporate powers, unless you make it *general*, that is, make it apply to your constituents as well as to others.

"Corporate powers," as these words are used in the Constitution, contemplate powers to be exercised *in futuro* by the will of the corporate body. They contemplate future action. They contemplate an exercise of the corporate will. When powers to be exercised *in futuro* are granted the language, of the grant and the scope of the powers may be misapprehended, and their exercise abused.

The remedy provided by the Constitution is, not

that no corporate powers should thereafter be granted, but they should not be conferred by *special* act, the object being to prevent the incautious grants of powers liable to misconception and abuse on the part of the corporate authorities by subjecting the legislative grant thereof to the scrutiny of every member, since the constituency of every member would or might be affected by any general law applicable to all localities and to all persons.

GENERAL LEGISLATIVE RESPONSIBILITY as a means of securing the public against improper or careless grants of corporate powers to be exercised *in futuro* by the corporate body is the key note of the true construction of the constitutional limitation in question.

The advantages of general incorporating acts over special charters which the Constitution had in view are: 1st, to prevent favoritism and abuse in procuring extraordinary or unwise grants of special powers; 2d, to secure uniformity of rule and construction; and, 3d, as all are created and endowed alike, real wants and grievances on the part of the people subjected to their authority are sooner felt and more promptly remedied.

School Dist. vs. Ins. Co., 101 U. S., 707.

In the light of these considerations it is obvious that the legalizing Act of 1873 is not an act conferring corporate powers. The bonds had already been issued and sold. So far as the creditor is concerned the legalizing act deals with the past and not with the future. It enacts that the city having done certain recited things which create a just and equitable, though possibly not a *legal*, obligation to pay the bonds given for money then in the city treasury,

these bonds shall be valid. Suppose it had enacted that the defendant city should refund the money—would this have been an act conferring corporate powers? Instead of that it chose to enact, doubtless at the instance of the city, which then intended to keep the faith which it had pledged in the bonds, that the bonds should be valid wholly irrespective of any exercise of *future* will or power on the part of the city.

So far as the bondholder is concerned the legalizing act confers no power upon and contemplates the exercise of none by the city. It validates the bonds whether the city wills it so or not. Nothing is to be done by the city as respects the bondholder, and nothing depends upon its consent. How can such an act be said to be an act conferring corporate power? It is an act whose force does not depend upon the exercise of corporate consent, power or will. It depends for its force and virtue alone upon the legislative will expressed and made final in the act itself. It owes its efficacy not to any power conferred upon the corporation, since it took effect immediately upon its passage, *non obstante* any objection the city might make.

It touched the infirmity in these bonds, and by *its* sovereign virtue instantly made them whole.

If such an act is beyond legislative competency, it must be because of some *other* limitation upon the legislative power.

If the Constitution prohibited *retrospective legislation in all cases whatsoever*, the provision might, possibly, embrace legalizing acts, whether general or special. But there is no such prohibition in the Constitution of Nebraska; therefore, the Legislature may pass *curative* acts, dealing with past transactions,

provided vested private rights are not infringed or other constitutional limitations are not exceeded. And hence the only question under the Act of 1873, is as to the *form* of such acts. It is contended by the city that curative legislation as respects corporations cannot be in the form of a *special* act, but must be in the form of a *general* enactment. Why so? The injustice to be remedied is special, and known and particular. No other *just such* case can exist; why then should the remedy be general? If the legalizing act is confined to the exact case presented for legislative remedy there is no danger of the Legislature going beyond or aside from its purpose. But if the legalizing act *must* be made general so as to embrace all like or similar cases, the special circumstances of which are not known to or considered by the Legislature, it may, when thus framed, include cases within its general terms which the Legislature would not have included if the precise facts had been known to it.

No two cases, any more than two faces, can be exactly alike. No other city in Nebraska has had just such powers in respect of schools, as the defendant city; and it is so improbable as to be quite impossible that the powers of any other city had been exercised or exceeded, if exceeded they were, under just the same circumstances, as to popular vote, amount, sale of bonds, receipt of proceeds into the treasury, where it remained when the Legislature acted, and the making of contracts by the city to erect the building on the faith of what had been done—on which the city would be liable and could not plead *ultra vires;* under these circumstances what reasons exist why this special case shall

be remedied only by a general law which shall include all other similar cases?

I say *similar* cases for precisely the *same* case cannot exist elsewhere—and things *similar are not the same.*

The more the subject is considered the more clearly it will be seen that the same reasons exist why a retrospective validating act of this kind should be special and confined to known and specified cases, that exist why a *prospective* act conferring corporate powers to be exercised *in futuro* by a corporate body should be general and not special.

There is, indeed, an inherent and necessary difference between a curative act and one conferring powers. One statute may embrace them both, but both cannot be one. A curative act, as in the case at bar is absolute and *retrospective.* Power is *prospective*, involved with the idea of will, and necessarily contingent. The Legislature cannot, and does not attempt, at one and the same time, to declare the bonds valid and to put it in the power of the city to declare them so or not. *It simply declares the bonds valid. In so doing it is exercising* A POWER OF ITS OWN, AND NOT CONFERRING A POWER UPON THE CITY.

*The foregoing view of the object, scope and meaning of the special constitutional limitation under consideration, has a full support in* JUDICIAL JUDGMENTS.

Expounding the corresponding provision of the OHIO Constitution, that "the General Assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed," one of the ablest and most dis-

tinguished justices of the Supreme Court of Ohio, RANNEY, J., in Atkinson vs. M. & F. R. R. Co., 15 Ohio St., 21, 35, says:

> "These provisions of the Constitution are too explicit to admit of the least doubt, that they were intended to disable the general assembly from either creating corporations, or conferring upon them corporate powers, by special acts of legislation. It was intended to correct an existing evil and to inaugurate the policy of placing all corporations of the same kind upon a perfect equality as to all *future grants of power;* of making such laws applicable to all parts of the State, and thereby securing the vigilence and attention of its whole representation; and finally, of making all judicial constructions of their powers, or the restrictions imposed upon them, equally applicable to all corporations of the same class."

In P. & O. Canal Co. vs. Commissioners, 27 Ohio St., 14, 21, it was held that a *special act authorizing a particular corporation* by name to abandon a portion of its canal was not an attempt by special legislation to confer corporate powers, and, therefore, not in conflict with the constitutional limitation referred to. In the case just cited, WRIGHT, Justice, says:

> "The object of the constitutional inhibition (that the General Assembly shall pass no special act conferring corporate powers), is to prevent the granting or enlarging of corporate powers by special legislation."

The effect of the constitutional limitation in question was instructively considered in the case of the State of Ohio *ex rel.* Atty. Gen. vs. Covington, 29 Ohio St., 102, 110, in which the question was whether an act passed on the 24th day of March, 1876, entitled "An Act to regulate the police force in cities of the first class, and to repeal an act passed December 18, 1874, entitled 'An Act for the better

regulation of the police force of cities of the first class, having a population of two hundred thousand or over,' and to repeal an act entitled 'An Act to establish a board of police commissioners in certain cities of the first class, passed March 29, 1873,'" was constitutional or not. The defendants were police commissioners and a board of health for the city of Cincinnati, claiming under the above Act of March 24, 1876. In delivering the judgment of the Court, holding that the act was constitutional, McILVAINE, J., says:

> "The statute under which the defendants claim to hold and exercise the offices and privileges named in information provides: 'That in all cities of the first class, having at the last federal census a population of two hundred thousand and over, the police powers and duties shall be vested in and exercised by a board of five members, to be appointed by the Governor for the term of five years," &c.
>
> "The terms employed in the Statute to describe the class of cities provided for were intended, probably to make the Statute conform to the requirements of Section 26, Article 2, of the Constitution, which provides: 'All laws of a general nature shall have a uniform operation throughout the State,' and, perhaps, also to save it from question under Section 1, Article 13, which provides: 'The General Assembly shall pass no special act conferring corporate powers.'"
>
> "If such were the purpose, it is well to say here that such ends cannot be accomplished by such means. This enactment is essentially local and special in its nature. We do not deny that the Legislature may classify the subjects of legislation, to wit, cities and villages, and that a statute in relation to the class would be treated as a general law, within the meaning of these provisions of the Constitution; but there is no classification accomplished by this statute. Cincinnati was, is, and ever will be the only city in this State that had a population of two hundred thousand and over at the federal census of 1870. Cincinnati, therefore, is the only city to which this statute can ever apply, and it might as well have been named in the act.
>
> "But regarding the act as *local and special in its nature*, how is

it affected by these constitutional provisions? This question is not raised by counsel, but we think it stands in the way.

"Section 26 of Article 2 does not forbid local legislation. Its requirement is that laws of a general nature shall have a uniform operation throughout the State. It does not require that all enactments of the Legislature shall be of a general nature. On this point I will only add that the power of the General Assembly to pass local and special laws is embraced in the general grant of legislative power; subject, of course, to such inhibitions and limitations as are found elsewhere in the Constitution. But Section 26, Article 2, was not intended as a limitation on the power. It was upon this view of the Constitution that a statute similar to this was held constitutional in Welker vs. Potter, 18 Ohio St., 85, notwithstanding the language, at the close of the opinion, would seem to indicate otherwise.

"As to the first section of the 13th article it is enough to say here that the board, which the defendants constitute, is not a corporation, nor are its powers under the statute within the meaning of this section.

See Walker vs. Cincinnati, 21 Ohio St., 14."

In The State ex. rel., v. Lawrence Bridge Company, 22 Kan., 438, 456, the Supreme Court of KANSAS in holding that it was beyond legislative competency, either by special act or by an act general in its terms to continue an expired special charter, thus expounds the kind of legislation which the prohibition to pass special acts conferring corporate powers, was intended to cover. Mr. Chief Justice HORTON, quoting the language of RANNEY, J., *supra*, says:

"Before the adoption of the Constitution, the practice was to create corporations by special laws. This practice resulted in partial, vicious and dangerous legislation. To correct the existing evil, and to inaugurate the policy of placing all corporations of the same kind upon a perfect equality as to all future grants of power, of making such laws applicable to all parts of the State, and thereby receiving the vigilance and attention of its whole representation, and finally, of making all judicial con-

struction of their powers, or the restrictions imposed upon them, equally applicable to all corporations of the same class. (Atkinson vs. Railroad Co., 15 Ohio St., 21,) it was ordained by Section 1, Art. 12 of the Constitution, that the 'Legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed.' These provisions are clear and explicit; they are a limitation upon the legislative power of the State. Any act expressly violative of these provisions would be void, and the well-recognized rule that what may not be done directly cannot be done indirectly, is as applicable here as elsewhere. Constitutional provisions would be of little value if they could be evaded by a mere change of forms."

Such being the judicially ascertained objects of the constitutional limitation, I now refer to other decisions to the effect that CURATIVE ACTS PROPER (that is, acts which have their root in justice and equity and which deal with the *past* and not the *future*) DO NOT FALL WITHIN THE SCOPE OR MEANING OF THIS SPECIAL LIMITATION.

The provision of the constitution of Nebraska, "The Legislature shall pass no special act conferring corporate powers", is as we have seen, literally borrowed from the constitution of Ohio.

The case of Foster vs. The Commissioners of Wood County (9 Ohio State, 540), holds that legislation such as the Nebraska curative Act of 1873, is not a violation of the constitutional provision in question. In the Ohio case, the Legislature in 1850 incorporated the Wood County Turnpike Road, and authorized the assessment of eight cents per acre on all lands within a given distance on each side of said road, for a limited period. This time expired in March, 1854. The road, at that time, "remained unfinished and unpaid for." In May, 1854, the Legislature passed an Act, entitled "An Act author izing County Commissioners to grant further time

for the completion of free turnpike roads, and paying for the same"; under which the Commissioners of Wood County extended the time, and authorized the levy of a special tax for four years. Foster, a land owner, whose property was subject to the tax, brought an action to restrain its collection, and contended that the Act of May, 1854, was a "special Act conferring corporate powers," and therefore in conflict with the constitution. The Supreme Court overruled this objection and gave its reasons as follows:

> "The other ground relied on is, that the Act is a special one, conferring corporate powers, and repugnant to the first section of the 13th article of the constitution. We do not think it necessary to follow the counsel for the plaintiff in his elaborate argument as to the true meaning of that section of the constitution. We prefer to take the question negatively, and say that this particular case is not embraced, without attempting to lay down any rule as to other cases. We regard this case as somewhat anomalous. We need not decide whether such a corporation [as the Turnpike Company] could be formed, or its powers as a corporation renewed by a special Act, or whether the Act passed [May, 1854] is to be regarded as a general or a special Act; for we think that the particular thing authorized in this case can, in no proper sense, be deemed a corporate power within the meaning of that section of the constitution."
>
> "The public road in a particular locality, for the construction of which a provision has been made before the adoption of the constitution, remained unfinished and unpaid for. It was duty resting on the Government to dispose of this road. For the purpose of its completion, or the payment for labor expended, a law is passed directing the County Commissioners to assess for a limited period of years, the property immediately benefitted. The amount of money so raised, is to be expended under the direction of those having charge of the road. Now, in all this, we are not able to say, certainly not with that clearness and freedom from doubt which such a case requires, that the Legislature exceeded its powers and violated the constitution."

So in the State of NEBRASKA, a special Act to compel a particular county to pay a just debt was sustained. Shortly stated, the case was this :

The Nebraska Legislature in 1875 (Laws of 1875, p. 268), passed an Act "authorizing the County Commissioners of *Jefferson* County to provide funds for the payment of certain outstanding warrants of said county," by issuing bonds, selling the same, and using the proceeds in payment of warrants issued to contractors for the erection of a court house and jail ; it was held, that Commissioners having express authority, under the statutes then in force, to contract for the erection of said buildings, and the county being justly indebted therefor, the Legislature had full constitutional power to pass the Act in question, which, it will be observed, was a special Act limited to the County of Jefferson.

Commissioners of Jefferson County vs. The People *ex rel* N. K. Griggs, 5 Neb., 127.

I do not regard the judgment of the Supreme Court of Nebraska, in Hallo vs. Helmer, 12 Neb., 87, as overruling the case just cited (which it does not profess to do), or as deciding that a *curative* act proper (that is, one having its root in equity and designed to cure a past error) may not be special. The legislation in the case last cited would have been equally objectionable whatever the *form* of the Act, whether general or special.

The case of the State vs. Squires, 26 Iowa, 340, which was elaborately argued and carefully considered, decides the exact doctrine we are maintaining. Section 30, of Article 3, of the Constitution of IOWA is as follows:

"SEC. 30. The general assembly shall not pass local or special laws in the following cases:

"For the assessment and collection of taxes for State, County or road purposes;

"For laying out, opening, and working roads or highways;

"For changing the names of persons;

"For the incorporation of cities and towns;

"For vacating roads, town plats, streets, alleys, or public squares;

"For locating and changing county seats.

"In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State."

Section 1, of Article 8, of the Constitution of Iowa, is as follows:

"SECTION 1. NO CORPORATION SHALL BE CREATED BY SPECIAL LAWS; but the general assembly shall provide by GENERAL LAWS, for the organization of ALL corporations hereafter to be created, except as hereinafter provided."

The proceeding in the case last cited, was by *quo warranto* against the defendants, who claimed to be officers of a corporation styled "The Independent School District of Epworth." The defendants by their answer claimed to be such officers by virtue of a *Special* Act of the Legislature of Iowa, approved March 6, 1868, entitled "*An Act to legalize the organization of the independent School District of Epworth, County of Dubuque, Iowa.*" The district had been organized without due legal authority in April, 1866. The relator demurred to the answer, because; *first*, said *Act of March 6, 1868, is a local and special law*, and not of uniform operation, and in a case where a general law could be made applicable, and is therefore void by the Constitution, Article 3,

Section 30; *second*, it is *equivalent to creating a corporation by special law*, and void by the Constitution, Article 8, Section 1; *third*, it is *ex post facto* and retrospective, and could not cure defects existing in April, 1866.

In affirming the judgment below overruling the demurrer, the Supreme Court of IOWA state its reasons as follows:

> "It is claimed by appellant's counsel that under our constitution (Art. 3, Sec. 30), which provides that the general assembly shall not pass local or special laws, etc., it would not be competent for the Legislature to pass a law incorporating the 'independent School District of Epworth.' This proposition cannot be successfully controverted. It finds an abundant support in the previous decisions of this Court. Ex parte Pritz, 9 Iowa, 30; Davis & Brothers vs. Woolnough, id., 107; Baker & Griffin vs. Steamboat Milwaukie, 14 Iowa, 214; McGregor vs. Bayliss, 19 id., 47. In our view, however, the act set up in the defendant's answer is not, in any just sense, *a law creating a corporation, but is*, both in law and fact what its title purports, *a curative act* legalizing the defective organizatoin of an independent School District.
>
> "It is next claimed that the *curative act* relied on in the defend ant's answer, and to which the demurrer is aimed, gives to the 'Independent School District of Epworth' *its only legal vitality; and since the Legislature could not do this by direct creative act, it cannot do it indirectly, under the guise of a curative act.*"
>
> "It might be well conceded, for the purposes of this case, if not wholly, that the Legislature cannot do indirectly what it has not the power to do directly. But it cannot be successfully controverted that the Legislature has the power to create or authorize the creation of independent school districts. This power, however, must be exercised by a general law, of uniform operation, and it has been so exercised. See Laws of 1862, ch. 172, The power of the Legislature, then, to create the Independent School District of Epworth, must be conceded. Having the power to do it directly, it would follow that it might do it indirectly, unless the manner in which it was sought to be done is inhibited by the constitution.
>
> "And here, again, it is claimed that the special law is inhibit-

ed by Article 3, Section 30, of the Constitution, which forbids the General Assembly to pass any local or special laws in certain enumerated cases, 'and in all other cases where a general law can be made applicable.' That this is a *local* law cannot well be questioned. *Is it a case where a general law can be made applicable?* Certain irregularities in the manner of the organization of the Independent School District of Epworth are alleged to have occurred. No other precise or analogous case is alleged or suggested as existing anywhere else in the State. No legal presumption arises that there is one. A general law, therefore, which would be suited to the necessities of the Independent School District of Epworth, could have no other or greater operation than the act in question; and if it could or would have no other effect, then no advantage could be derived, nor any evil avoided, by making a general law instead of the law which was enacted. This law, then, is not within the evil which the constitution sought to provide against, nor would the enactment of a general law therein afford any remedy for, or relief from, that evil. See Town of McGregor vs. Bayliss, 19 Iowa, 43. A general law, therefore, would not be applicable under the meaning of that term, as used in the constitution. The act is not in conflict with Article 3, Section 30, or Article 1, Section 6."

After holding, "in the absence of any constitutional inhibition, it has been uniformly held, that the Legislature has the power to pass retrospective or retroactive laws," the opinion concludes as follows:

"We have already referred to the point that, in order to the rightful exercise of the Legislative power to cure a defective proceeding, the Legislature must have possessed the power to authorize the result by prior legislative enactment. But it is not necsssary that it must have accomplished the result in the precise manner it has adopted to cure the defect. In the case at bar, the Legislature might, by a general law providing for the incorporation of independent school districts, have authorized their organization in districts having less than three hundred inhabitants, and upon less than ten days' notice. Having this

power it may rightfully legalize or cure the organization which was defective only because of a failure to comply with particular requirements which it was competent for the Legislature to have waived entirely in the original law. It was a matter of discretion with the Legislature to require the performance of these precedent conditions; hence it may waive a failure to perform them. Nor is the power of the Legislature to cure defective or irregular proceedings limited by the fact, but, for such curative act, the defective proceeding would be wholly invalid or inoperative. Wilkinson vs. Leland, 2 Peters, 661; Satterlee vs. Matthewson, *Id.*, 412; Watson vs. Mercer, 8 *Id.*, 88; Cowgill vs. Long, 15 Ill., 203; Menges vs. Wertman, 1 Penn. St., 218.

"It cannot be claimed that the act in controversy divests or interferes with vested rights, or that it contravenes sound public policy. But, on the contrary, it is reasonable, and conducive to the public good, in quieting litigation and otherwise, and as it does not conflict with the constitution or violate any principle of Justice, it should be upheld."

## Validity and Effect of the General Validating Act of 1875.

Inasmuch as in this case the Legislature of Nebraska, not content with passing the *Special* Validating Act of 1873, which I have discussed at such length, afterwards in 1875, doubtless anticipating the precise objection which has been urged against the Special Act of 1873, by the defendant, passed a General Validating Act (set out in full, *ante*, pp. 14, 15).

Plattsmouth City is, as we have seen, a city of the *second* class. These bonds, as recited therein, were issued by the defendant in 1872 for the "construction of a high school building in said city." The General Validating Act of 1875, in its second clause enacts "that ALL *bonds* heretofore issued by any city of the *second* class in good faith for the erection of, or to procure the means *for the erection*

*of a high-school building* within such city, whether issued under a general or special law providing therefor, SHALL BE LEGAL AND VALID."

There was no provision in the Constitution of Nebraska under which the bonds in question were issued forbidding retrospective legislation. It being well established that, in the absence of special constitutional limitation, such legislation is competent, I am at a loss to conceive, however it may be with respect to the *Special* Validating Act, what well founded objection can be urged against this *General* Validating Act. It is sufficient on this point to refer the Court to the case of Ritchie vs. Franklin County, 22 Wallace, 67, arising under the Constitution and legislation of MISSOURI. The Constitution of Missouri ordained as follows:

> "Article 1. No law *retrospective* in its operation can be passed.
>
> Article 4. The General Assembly shall not pass *special laws*, * * establishing, locating, altering the course or affecting the *construction of roads, or the repairing or building of bridges;* or legalizing, except as against the State, the unauthorized or invalid acts of any officer. The General Assembly shall pass no special law for any purpose for which provision can be made by a general law, but shall pass general laws providing so far as it may deem necessary for the cases enumerated in the section and for all other cases where a general law can be made applicable."

With these provisions of the Constitution in force the General Assembly of Missouri on March 21st, 1868, passed an Act (quoted 22 Wall., p. 70) "to authorize County Courts to issue bonds for the purpose of paying for the building of bridges and macadamized roads *heretofore* contracted for and built."

Both the Supreme Court of Missouri (Steines vs. Franklin County, 48 Mo., 175) and this Court

in Ritchie vs. Franklin County, 22 Wall. 67, held such an Act to be good whether considered as an original Act *or one merely curative.* And it is established law in the State of Missouri, notwithstanding the foregoing provisions of its Constitution against retrospective and special legislation, that *acts validating* the defective exercise of power by municipal corporations are valid. The observations of Mr. Justice DAVIS throughout the above cited case of Ritchie vs. Franklin County, as to the obscure legislation leading to the issue of bonds there in question; as to the equitable considerations for curative legislation; and as to the nature of curative acts as being "intended to cure past errors without leaving room for future ones," are applicable in all their force and cogency to the present case.

The conclusion of the whole business is that, unless the Legislature of Nebraska is disabled by the Organic Law FROM BEING HONEST, OR FROM DECLARING TO BE VALID THE HONEST DEBTS OF ANY OF HER MUNICIPAL SUBDIVISIONS FOR WHICH A FULL CONSIDERATION HAS BEEN RECEIVED AND IS BEING DAILY ENJOYED, THE JUDGMENT BELOW MUST BE REVERSED.

JOHN F. DILLON,
For the Plaintiff in Error.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1882.

| | |
|---|---|
| CASSIUS H. READ, Plaintiff in Error, vs. CITY OF PLATTSMOUTH, Defendant in Error. | No. 167. |

## Brief of Plaintiff in Error in Reply.

JOHN F. DILLON,
WAGER SWAYNE,
For Plaintiff in Error.

### Power to Issue the Bonds.

The plaintiff in error insists that there are four separate sources of power to the defendant city to issue the bonds in suit:

1st. *Special charter* authority "to borrow money for any object in their discretion" (Brief in Chief, p. 6 *et seq.*, where Section 41 is quoted).

Whether this special charter authority is repealed by the General Incorporating Act of March 1, 1871, see Section 5 of that Act, Genl. Stats. Neb., 1873, p. 138.

That section is as follows:

"An Act entitled 'An Act to provide for the incorporation of cities of the second class, and to define their powers,' approved February 15, 1869, and also all Acts conferring a special charter or special powers upon any particular city or town; and also all Acts and parts of Acts heretofore enacted by the Legislature of the territory or of the State of Nebraska in conflict with the provisions of this Act, saving all rights, privileges and causes of action which have accrued, as set forth in the last preceding section, are hereby repealed."

If repealed, then—

2. Authority to borrow money is expressly given without limit as to purpose or amount, when sanctioned by a popular vote, by the *General Incorporating* Act of March 1, 1871, Sec. 31, subdivision XXXIX.

(Quoted at large in my brief in chief, p. 10.)

3. Also by subdivision 12, of said Section 31, as follows:

"To provide for the erection and government of any and *all useful or necessary buildings for the use of the city.*"

Genl. St. Neb., 1873, p. 145.

The defendant City had full authority over schools and school buildings by the Act of 1867.

(Quoted at large in my former brief at pp. 8, 9.)

4. Bonds in suit are authorized by the Internal Improvement Act.

(Quoted at large in my former brief, p. 11.)

The counsel for the City is therefore mistaken when he says (Brief, p. 1) that "the only claim of authority for the issuing of these bonds is paragraphs 12 and 39 of Sec. 31, Charter of March 1, 1871.

Also mistaken in saying (p. 2) that "at the date of the issue of these bonds Plattsmouth, as a city of the second class, had no powers whatever to erect or maintain a school.

The learned counsel states that at the date of the issue of these bonds the entire State was subject to the General School Law, which divided every organized county into school districts, and that it nowhere authorized a city of the second class to act as a school district; from which it is argued (Brief of defendant in error, p. 2) that it would be strange " to say the City had power to erect a schoolhouse as a useful building for the City when it had no power to manage or carry on the school." In answer it is only necessary to quote § 64 of the said General School Law to show that so far as this case is concerned the Act has no application. The section referred to is as follows:

"Nothing in this Act shall be so construed as to interfere with or abrogate any of the rights, privileges and immunities, duties or liabilities, conferred or prescribed by *special enactment* for any school district comprised within any incorporated city." General Statutes, chapter 68, page 972, sec. 64.

*Special school enactment* of 1867 as to defendant City, quoted at large in my former brief, pp. 8–9.

School buildings are therefore "*useful* or necessary buildings for the use of the city," under ¶ 12, sec. 31

of General Incorporating Act of March 1, 1871, quoted *supra*.

I refer to my brief in chief for my views of the effect of these enactments in giving authority to issue the bonds in suit. If sufficient, the validating Acts are immaterial.

## Constitutionality of the two validating Acts.

There are two validating Acts:

*Special validating Act of February 18, 1873.*

(Quoted at large former brief, pp. 11–13).

As to the objection that this is a "special Act conferring corporate powers," I do not wish to add to my former discussion.

An objection is made to this Act, which I did not anticipate, viz., "that the subject is not clearly expressed in its title."

This we discuss in connection with the same objection urged against the *general* validating Act.

2. *The general validating Act of February 25, 1875.*

(Printed at large brief in chief, pp. 14, 15).

Two objections are made to this Act which we did not foresee, and therefore did not discuss in our former brief.

1. Its subject is not clearly expressed in its title.

2. It does not set out or contain the entire sections of the act amended.

**The title to each of the validating Acts is sufficient.**

The title to the special validating act (former Brief, p. 12 for text) is so full and explicit that we do not consider any separate discussion called for.

What it is deemed necessary to say (and much more) will be said in discussing the sufficiency of the title to the *general* validating act.

The defendant is a city of the second class, under the Act of March 1, 1871, which is entitled "An Act to incorporate cities of the second class, and to define their powers."

This act gave to all cities of the second class all the usual powers of a chartered municipality, and among others, express power "TO BORROW MONEY ON THE CREDIT OF THE CITY" and "TO ISSUE BONDS" and to "LEVY TAXES" to pay the same.

See former brief, p. 10, where the statute is set out.

The title of General Validating Act of February 25, 1875, is as follows:

> "An Act to Amend an Act to incorporate cities of the second class and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned."

The act is reprinted in full in former brief on pages 14, 15.

The *second* section, which is the one applicable here, is as follows:

> "§ 2. THAT ALL BONDS HERETORORE ISSUED BY ANY CITY OF THE SECOND CLASS IN GOOD FAITH FOR THE ERECTION OF, OR TO PROCURE THE MEANS FOR ERECTING A HIGH SCHOOL BUILDING WITHIN SUCH CITY, or for heating or furnishing the same, whether issued under a general or special law providing there-

for, or any bonds hereafter issued by such city in exchange for any such bonds, SHALL BE LEGAL AND VALID; AND ANY TAX HERETOFORE OR HEREAFTER LEVIED TO PAY THE INTEREST OR A PORTION OF THE PRINCIPAL OF ANY SUCH BONDS, not exceeding five mills on the dollar valuation of the taxable property in the city in any one year, SHALL BE LEGAL AND VALID."

The Constitution of Nebraska provides:

Art. II sec. 19. "No bill shall contain more than one subject which shall be clearly expressed in its title."

The objection is that the subject matter of the second section of the Act is not sufficiently expressed in the title.

This is a constitutional provision existing in most of the States and has been construed by the Courts in decisions too numerous to refer to.

See Cooley Const. Lim., 172–183.
And cases cited Dillon Munic. Corp., (3d ed.) Sec. 51.

The Courts agree that this requires only the general or ultimate object to be stated in the title, and not the details by which that object is to be attained or carried into effect.

Judge COOLEY states the rule thus: "The general purpose of these provisions is accomplished when a law has but one general object which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of this general object to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible." Constitutional Limitations (4th Ed.) 175.

The true construction of this provision becomes plain upon an examination of the causes which led to its adoption. The practice of incorporating in the same bill various matters in no way related to each other is very old, and has always been the

source of great abuses. The obvious purpose of this practice was to deceive the legislature or to enlist the support of hostile interests. This provision in the Constitution of Nebraska was aimed directly at that abuse, and a similar provision is found in the Constitutions of nearly all the States of the Union,* some of which specifically recite the object of its adoption.

The provision in the constitution of New Jersey is as follows: "To avoid *improper influences* which may result from intermixing in one and the same act *such things as have no proper relation to each other*, every law shall embrace but one subject and that shall be expressed in the title," IV, § 7, 4.

In O'Leary vs. County of Cook, 28 Ill., 539, the Court says:

"The object (of this provision) was to prevent them (the legislature) from covertly embracing several *distinct and foreign* subjects in one act;" and "It was not the purpose of the constitution to deprive the legislature of any power necessary to enable them to make private legislation *ample and abundant* to accompany its legitimate purpose." In New York the Court of Appeals hold that the ob-

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*See Constitutions of following States:

Alabama, IV. 2.
Arkansas, V. 22.
California, IV. 25.
Florida, IV. 30; IV. 14.
Georgia, III. 9, V.
Illinois, IV. 13.
Indiana, IV. 19.
Iowa, III. 29.
Kansas, II. 16.
Kentucky, II. 37.
Louisiana, VI. 114.
Maryland, III. 29.
Michigan, IV. 20.
Minnesota, IV. 27.
Missouri, IV. 32.
Nebraska, II. 19.
New Jersey, IV., § 7, 4.
Nevada, IV. 17.
New York, III, 16.
Ohio, II. 16.
Oregon, IX. 7; IV. 20.
Pennsylvania, XI. 8.
So. Carolina, II. 20.
Tennessee, II. 17.
Texas, XII. 17.
Virginia, V. 15.
West Virginia, VI. 30.
Wisconsin, IV. 14.

ject of the provision was: "that neither the members of the legislature nor the people should be misled by the title."

Sun Mutual Ins. Co. vs. The Mayor, 8 N. Y., 253.

And according to the Supreme Court of Iowa: "The intent of this provision of the constitution was to prevent the union in the same act of *incongruous matters and of objects having no connection, no relation.*"

State vs. County Judge of Davis Co., 2 Iowa, 282.
See also State vs. Silver, 9 Nev., 227.

The States of Ohio and California have gone so far as to hold that the constitutional provision under consideration is merely directory, and have upheld as valid statutes in which the provision is violated.

Tim vs. Nicholson, 6 Ohio N. S., 176.
Washington vs. Page, 4 Cal., 388.
*Ex parte* Newman, 9 Cal., 502.
Pierrepont vs. Crouch, 10 Cal., 315.

The construction, which has been almost universally put upon this constitutional provision, is this: *The general object of a statute is all that need be expressed in the title, and all the provisions of the statute will be valid which fairly relate to that object, and are naturally connected with it.*

The cases hereafter cited will be found to be good illustrations of this interpretation.

OUR ANSWER to the objection in the case under consideration is:

1. That it is settled by many decisions that

in an *original* Incorporating Act it is sufficient to entitle it "An Act to Incorporate" a specified city, without setting forth the various powers conferred; and in an Amendatory Act it is sufficient to entitle it "An Act to Amend" a specified charter, especially where the Amendatory Act relates to matters embraced in or germane to the original. Hence the title to the Amendatory Act of February 25, 1875, would have been sufficient even without the words "and to legalize certain taxes therein." But if it were otherwise, then

2. The whole title taken together sufficiently expresses the subject matter of the Act.

The bill is to amend the charter "and *to legalize certain taxes therein mentioned.*"

Among the taxes therein mentioned in sec. 2 is "any tax heretofore or HEREAFTER levied to pay any bonds heretofore issued by any city of the second class in good faith for the erection of, or to procure means for erecting, a high school building within such city."

The title clearly points to and indicates the subject matter of the section.

The provisions in section 2d of the General Validating Act of 1875, in regard to levying taxes, would be sufficient to have validated the bonds therein referred to without an express enactment to that effect, on the principle that when such a power is given its exercise becomes a duty in favor of those intended to be benefited.

Thus it is well settled that all acts conferring powers are to be construed as mandatory whenever the public interest or *individual rights* call for the

exercise of the power conferred, even where the terms of the statute are permissive only and mean no more than the words generally employed in the statute imparting a grant of authority or power to a public officer to do a certain act.

Supervisors vs. United States, 4 Wall., 435.

Galena vs. Amy, 5 Wall., 705.

MacDougal vs. Peterson, 11 C. B., 755.

## Cases Relating to the Sufficiency of Titles to Acts.

As showing the course of decision in respect of the titles to City charters and amendments thereto, the Court is referred to the following cases, which are briefly stated :

An act entitled, "*an Act to amend the several acts in relation to the City of Rochester,*" contained among other, the following provisions: in relation to collection of taxes, etc.; appointing a board of public works, defining their duties, etc., and giving them power over streets, sewers and all other public works with certain exceptions; authorizing the tracks of a street railroad to be relaid; provisions relating to the water works and water commissioners, etc. The Court held that the title "*expresses a subject comprehensive enough to embrace all the details of a city charter, and that all the provisions of the statute were within the title.*

*City of Rochester vs. Briggs,* 50 N. Y., 553.

An Act entitled "*An Act to amend the Charter*" of a city contained the following provisions : That Aldermen shall not, as theretofore, sit as members of a certain Court; that the remaining members of

such Court shall transact its business, and for the punishment of city functionaries for bribery. Held that the title properly expressed the subject of the Act.

*Phillips vs. N. Y.*, 1 Hilton, 483.

An Act of 1841 authorized a city to raise money by a tax of residents, and by its title was limited to residents. In 1847 an Act was passed "to amend the Act of 1841," and recited its title. One of its provisions imposed a tax on the property of non-residents. Held that the subject was properly expressed in the title.

*Jones vs. Columbus*, 25 Geo. 610.

It has been held that the title "an Act to amend" a certain specified act is sufficient *when the title of the original statute was proper*, and the amendatory statute contains nothing which is not germane to such original.

Swartwout vs. Mich. Air Line R. R. 24 Mich. 389.

Brandon v. State, 16 Ind. 197.

If the title does not mislead or effect a surprise it will be good, although not the most apt possible or not as full as might be.

People vs. McCullum, 1 Neb. 182.

Commonwealth vs. Green, 58 Penn. St. 226.

Where a law has but one general object and the title fairly expresses it, that will satisfy the constitutional requirement.

The State vs. Page, 12 Neb. 386.

A provision in or amendatory of an *Act incorporating a college* which prohibits the *sale of ardent*

*spirits* within a distance of four miles, although no such object or subject is named in the title of the bill, is not unconstitutional. Such a provision is so germane to the primary object of the charter as not to conflict with that provision of the Constitution which declares that no private or local law shall embrace more than one subject which shall be expressed in the title.

O'Leary vs. County of Cook, 28 Ill., 534.
See also Belleville R. R. vs. Gregory, 15 Ill., 28, and 25 Ill., 181.

It is sufficient that the title expresses the subject and not the provisions of the act.

People vs. Lawrence, 41 N. Y., 137.
San Antonio vs. Lane, 32 Texas, 405.

"An *Act to amend the Act to incorporate a city*" contained a provision to extend the city limits. Held, that title properly expressed the subject.

*Marford vs. Unger*, 8 Clarke (Ia.), 82.
*Whiting vs. Mt. Pleasant*, 11 Iowa, 482.

If the amendment is not foreign to the title of the original statute it is valid.

*Underwood vs. McDuffie*, 15 Mich., 361.

The title of an Act was "*to amend the charter*" *of a city*, and the body of the statute provided for a *new assessment* for certain city improvements, gave new power to the city council to lay out streets, etc., and fixed the time for the delivery of the tax lists, and it was held that the subject was properly expressed in the title.

*State vs. Newark*, 5 Vroom, 236.

Shortly stated, the case last cited was this: The Common Council of the city of Newark passed an

ordinance for the regulating, grading and paving a certain street. An assessment to pay the expenses of the improvement was made upon the persons whose property was benefited by the improvement. The ordinance and assessment were set aside on the ground that the ordinance was not in pursuance of the notice of the proposed improvement, and because it was defective in that it was not published according to law.

By an Act approved April 15th, 1868 (laws 1868, p. 1002), (after reciting that the city had undertaken at considerable cost the said improvement under the city ordinance, but on account of certain defects in the proceedings the city was embarrassed in collecting costs of the same), *it was enacted* that it should be lawful for the Common Council to appoint five commissioners to make an assessment of the whole costs upon the owners of the land benefited; and that it should be lawful for said commissioners, in case they deemed that any owner of lands had suffered damage by reason of the defects in said proceedings to estimate the same, and state what allowance should be made from the assessment laid on such owner; and that it should be lawful for said commissioners, in case they deemed it equitable that any portion of the whole costs should be borne by the city at large, to so estimate in their report; and thereupon they should assess *the balance* of the amount of such costs upon the owners of the lands benefited.

"It is objected that the Act of 1868 is unconstitutional because in contravention of ¶ 4 of § 7 of Art. 4 of the Constitution of the State, whereby it is ordained 'that to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each

other, *every law shall embrace but one object, and that shall be expressed in the title.*' The *title* of the act under consideration is '*A further supplement to the Act entitled "An Act to revive and amend the charter of the City of Newark,"* ' approved March 11th, 1857. The first four sections of the act relate to the assessment for the improvement in question, and others similarly circumstanced. The fifth section confers certain powers upon the Common Council, in reference to laying out and opening certain streets and squares; and the sixth section fixes the time within which the Board of Assessment of Taxes in said city shall deliver the tax lists to the Receiver of Taxes and Auditor of Accounts, and requires the Receiver of Taxes to deliver to the City Treasurer the lists of taxes, after the final returns of the Collector of Arrears shall have been made in each year. *In my opinion, this act has but a single object, which is to make an amendment or addition to the city charter, whereby certain defects found to exist therein are remedied.* The object of the act is sufficiently expressed in the title, by calling it a further supplement to the charter. * * * The dispute arising on the title of this act cannot be distinguished from that adjudicated in the case of the State on the relation of Walter vs. Town of Union, 4 Vroom, 350. Justice Van Syckel, delivering the opinion of the Court in that case, says: '*The validity of acts with general titles has been so long recognized by our Courts that it cannot now be questioned that under the title* "AN ACT TO INCORPORATE THE TOWN OF UNION," *a government for the town could be established, including taxation for its support, Courts for the trial of offenders, authority for laying out streets, building sewers and making assessments.*' These remarks apply with the same force to a supplement as to an original act of incorporation."

But it is said that the Supreme Court of Nebraska has held the *third* section of the Act of February 25, 1875, invalid, because the subject matter of that section was not expressed in the title.

Phillips vs. City of Tecumseh, 5 Neb., 312, 1877.

White vs. City of Lincoln, 5 Neb., 505, 1877.

This is true. But what of it?

The *third* section of that Act is as follows:

> "§ 3. That in all cases in which cities of the second class have collected and expended, for the use and benefit of such cities, either in works of internal improvement or otherwise, moneys collected from *licenses for the sale of intoxicating liquors*, such expenditures are hereby declared to be legal, and the same is hereby ratified and confirmed, and such cities of the second class are hereby exonerated from any and all liability therefor."

It will be seen that this section is not germane to anything in the General Incorporating Act of Cities of the Second Class, and does not relate to taxes, and hence the Supreme Court of Nebraska held that the subject matter of *this* section was not sufficiently expressed in the title.

The decision even as to the *third* section would seem to be of doubtful correctness and to be against the judgments above cited on similar questions. By reference to the opinions in the two Nebraska cases last cited it will be seen that existing statutes expressly provided that moneys arising from licenses for the sale of intoxicating liquors should go into the *County* School fund, and the judgment of the Court in the cases referred to may, in addition to the grounds before adverted to, have proceeded upon the ground that section 3 had the effect, if valid, to change an express statute *other than* the general incorporating act of March 1st, 1871, and hence the subject matter thereof ought to have been expressed in the title, which was *wholly silent* as to moneys arising from this source.

The cases are in terms limited to the *third* section and have no unfavorable bearing on the validity of the second section.

They are in one aspect favorable to the plaintiff. The Constitutional provision is that "No bill shall contain more than *one* subject," &c. If the 2d and 3d sections were valid, it might be claimed that they were *both* unconstitutional and void, because the bill contained *two* subjects.

It is held that if an act contains a subject which is properly expressed in its title, it is valid as to that subject, although it is invalid as to the subject not expressed. In re Van Antwerp, 56 N. Y. 261, 267.

This doctrine was asserted by the Court of Appeals of New York, in the case of the City of Rochester vs. Briggs, 50 N. Y. 565, already cited. In speaking of the sections of the act which was being considered, which related to a water supply for villages and a village tax to defray the expense thereof, the Court said:

"If the village clause should be construed as another subject, it would be invalid; *but would not affect other parts of the act in no way connected with it, the subject of which is properly expressed in the title.* * * * It is a universal rule that where a part of a statute is unconstitutional that fact does not authorize the courts to declare the remainder void unless the provisions are so connected together in subject matter, meaning, or purpose that it cannot be presumed the Legislature would have passed the one without the other."

See also Williams vs. Payson, 14 La. Ann. 7.

**Constitutional objection that the General Validating Act of 1875 does not**

**contain or set out the entire Act amended.**

It is objected that the General Validating Act of 1875 is in conflict with the provision of the Constitution that

> "*No law shall be revived or* AMENDED *unless the new act contain the entire act revived and the sections amended, and the section or sections so amended shall be repealed.*"
>
> Art, 2, § 19, Constitution of 1866–67.

This provision of the Constitution had for its object to put a stop to the loose practice of amending a law by simply directing that certain words be inserted or stricken out between certain other words.

The evil result of that practice was that the amending act of itself conveyed no sense, and unless read alongside of the amended act was altogether unintelligible.

The Constitution, by the provision under consideration, makes it necessary that an amending act standing alone shall be intelligible; and the Legislature and the people are enabled to understand the purport of any amendment without having recourse to other acts. "As the best light in which to discover the true meaning of this provision of the Constitution," says Crounse, J., in People vs. McCullum, 1 Neb. 196.

"Let us briefly inquire into the purpose of its institution, and perhaps the mischief it was designed to correct may be as well illustrated by reference to the course of past legislation. Taking up a volume of territorial laws nearest me, I open at page 20,

Laws of Territory of Nebraska, 1867, upon an 'Act to amend section 34, chapter 46 of the Revenue Law,' which does it in the following rather stenographic manner:

"'Section 1. Be it enacted by the Council and House of Representatives of the Territory of Nebraska, *that line four, section thirty-four, be amended as follows: Strike out the word "two," and insert the word "five;" that after the word "precinct" in tenth line insert the word "voting."*' Several serious objections to this character of legislation are obvious. With terms as blind as this a bill may be read three different times as required by the constitution, or a hundred times, and no one from its reading alone, except he who drafted the bill, or those immediately interested in it, would comprehend its object. Inexperienced and inattentive members would consent to the passage of any bill concerning the object of which they know nothing, when to inform themselves would involve an examination of other laws not readily accessible. Designing men could effect material changes in the most important laws, by deceiving members into the belief that they were acting upon other and less important subjects."

The purpose of this provision of the Constitution was to insure the framing of amendatory acts in such a shape that they could be readily understood, and would, when placed upon the statute book, be in a complete and intelligent form, not requiring recourse to other volumes to decipher their sense.

The Constitution does not require that a whole act shall be republished whenever a single section is amended.

Where a particular section is amended the Constitution is fully complied with in letter and spirit if the section is set forth and published as amended.

People vs. McCullum, 1 Neb., 194.
Greencastle, etc., Co. vs. The State, 28 Ind., 382.

But where the provisions of the new act do not amend any particular section of the existing act, and are amendatory in general, and only because they relate to the former act and validate certain proceedings instituted thereunder or governed thereby, then as there is no particular section amended, and therefore none to be republished as amended, the Constitution does not require the whole act to be published anew. The letter or spirit of the Constitution is not violated by the amendatory act in this case; and as that act is explicit and intelligible in its terms, the requirement of the Constitution is fully complied with.

As to the last part of the constitutional provision, "*and the section or sections so amended shall be* REPEALED," of course that also can only have application to cases where some particular sections of an act are amended, for where no particular sections are amended there can be none to repeal.

And even in those cases it has been held that where the Legislature fails to repeal the amended sections the Constitution itself effects the repeal and the statute is valid.

Medical College vs. Muldon, 46 Ala., 603.

And it has been decided that the provision as to repealing the section amended was merely directory.

Lehman vs. McBride, 15 Ohio State, 573.

**The Legalizing Act of 1875 is broad enough in its scope to embrace the bonds in suit.**

The objection (defendant's brief, p. 13) "that the

Act of 1875 legalizing certain bonds does not aid the plaintiffs' case, for that act only pretends to legalize bonds 'issued under a general or special law providing therefor,'" hardly seems to require that it should be pointed out that the Act of March 1, 1871, under which authority to issue the bonds is given, is a *general* law.

The end and sum of it all is that there is no legal obstacle in the way of the moral obligation to pay for the school houses in which the children of the defendant city are to-day being educated.

JOHN F. DILLON and
WAGER SWAYNE,
For the Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
DEC 29 1882
JAMES H. McKENNEY, Clerk.

17-568

# In the United States Supreme Court.

CASSIUS H. REED,
*Plaintiff in Error,*
*vs.*
THE CITY OF PLATTSMOUTH,
*Defendant in Error.*

Brief of Defendant in Error.

JNO. L. WEBSTER,
*Attorney for Defendant in Error.*

S. REES, Printer and Blank Book Manufacturer, Omaha.

# United States Supreme Court.

CASSIUS H. REED,
*Plaintiff in Error,*
*vs.*
THE CITY OF PLATTSMOUTH,
*Defendant in Error.*

Brief of Defendant in Error.

This is an action upon certain coupons of certain bonds purporting to have been issued by the City of Plattsmouth, October 1, 1872, to the amount of $25,000, and for the construction of a High School in said city.

*The first objection* to the bonds is that there was no law in force or power vested in the City authorizing the issue of these bonds when issued, and that the plaintiff knew this fact when he became the owner thereof.

The only claim of authority for the issuing of these bonds are paragraphs 12 and 39 of Section 31, Charter of March 1, 1871. Sec. 31 provides that such cities are authorized and empowered to enact ordinances for the purposes named in the paragraphs of said section. Paragraph 12 reads: "To provide for the erection and government of any and all useful or necessary buildings for the use of the City." Paragraph 39 reads: "To borrow money on the credit of the

City, and pledge the revenue and public property of the City for the payment thereof, *provided however*, that no such money shall be borrowed on any contract hereafter to be made, exceeding two thousand dollars, until the City Council shall be instructed so to do by a majority of all the votes cast at an election held in such City for that purpose." Useful or necessary buildings for the use of the City, within the meaning of the Charter, are buildings needful for the City as a municipality, to carry on its municipal government, and do not include school houses.

At the date of the issue of these bonds, Plattsmouth was a city of the second class, and had no powers whatever to erect or maintain a school. At that date the entire State, saving cities of the first class, was subject to the general school law, by which every organized county was divided into school districts (Chap. 68, General Statutes), and each school district was a body corporate (Sec. 12), and the school district had power to borrow money for erecting school houses, &c., not exceeding $5,000. (Sec. 30.)

Districts having more than 150 children may elect a board of six trustees (Sec. 66), who may establish a *High School* (Sec. 68), and so on. Nowhere was a city of the second class authorized to act as a School District, or to manage a school, or borrow money for any such purpose. It would be a strange argument to say the city had power to erect a school house as a useful building for the city, when it had no power to manage or carry on the school.

The power to erect such school houses and to borrow money for such purposes was vested by law in each school district, and that power to borrow limited to $5,000.

The first act of the legislature by which cities of the second class were created school districts, was passed February 25, 1875. See Session Laws of 1875, page 208.

The fact of payment of interest on these bonds for four years in no wise helps the plaintiff's case. This might estop the city from making any defense, on the ground of the irregularities in the voting for and the issuing of the bonds as set out in the second defense in the answer, provided the plaintiff was a *bona fide* holder of these bonds, but it cannot cure an entire want of power to issue the bonds. *Supervisors vs. Schenck*, 5 *Wall.*, 781.

As there was no law authorizing the issue of these bonds, the same are void, and the holder of the bonds is chargeable with notice of the want of such law. *Ogden vs. County of Davies*, 102 U. S., 640, and cases cited.

*The second objection* is that the curative act, passed February 18, 1873, and relied on in plaintiff's petition, is void, in that it is a special law, and confers corporate powers upon the defendant in violation of the State constitution. Said act is as follows:

"AN ACT to legalize the proceedings of the City Council of the City of Plattsmouth, in reference to the construction of a High School building, and to authorize the City Council to complete the same.

"WHEREAS, at a session of the City Council of the City of Plattsmouth, County of Cass, and State of Nebraska, held on the first day of July, A. D. 1872, the proposition of issuing the bonds of said city to the amount of twenty-five thousand

dollars, for the purpose of erecting a high school building, was submitted to the voters of said city; and

"WHEREAS, at a special election held in said city, for the purpose of voting on said proposition, on the 22d day of July, 1872, a majority of the votes cast were in favor of issuing said bonds; and

"WHEREAS, in pursuance of said submission and vote the City Council of said City of Plattsmouth have issued and sold said bonds, and with the proceeds thereof have proceeded to let the contract for the construction and completion of said house, and have appointed C. F. Driscoll and M. L. White superintendents of the construction of the same, and the work on said building has commenced; Therefore,

"*Be it enacted by the Legislature of the State of Nebraska:*

"SECTION 1. That all acts and proceedings of the City Council of said City of Plattsmouth, in relation to issuing said bonds, and letting the contract for the construction of said high school building, and the appointment of said C. F. Driscoll and M. L. White to superintend the construction of the same, and all matters and proceedings connected therewith, which may in any way affect the validity of said bonds or of the contract for the construction of said school house, be and the same are hereby legalized, confirmed, and made valid in law.

"SEC. 2. *And be it further enacted*, That the City Council of the said City of Plattsmouth are hereby authorized and empowered to proceed with the construction of said high school building until its completion, and for that purpose shall have full and exclusive control of all funds realized from the sale of bonds issued by the said City of Plattsmouth for that purpose.

"SEC. 3. All funds now in the hands of the said City Treasurer of said City of Plattsmouth, which have been created by the sale of the high school bonds of the said city,

shall be applied to the erection of said high school building, and shall not be appropriated or diverted to other use or purpose whatever.

"SEC. 4. *And be it further enacted,* That the right and title of the said City of Plattsmouth in and to block number twenty-four in said city, which has heretofore been platted and designated, on the recorded plat of said city, as a park, and dedicated to public use, and on which the said school house is being erected, shall vest and remain in the said City of Plattsmouth, for school purposes, and the same shall be held exclusively for said purpose.

"SEC. 5. This act shall take effect and be in force from and after its passage.

"Approved February 18, 1873."

Sec. 1 of Art. 8 of Constitution of Nebraska of 1867 reads as follows: "*The legislature shall pass no special act conferring corporate powers.*"

That this act is in violation of this constitutional provision, see *Clegg vs. School District*, 7 Neb. 178. *Dundy vs. Richardson County*, 7 Neb., 518. *School District vs. Insurance Company*, 103 U. S., 707. *City of Council Grove*, 20 Kansas, 619. *The State ex rel. vs. Mitchell*, 31 Ohio St., 592.

*The third objection* is that said act is unconstitutional in that it conflicts with Sec. 19, Art. 2, of the then constitution in that it contains MORE THAN ONE subject, and that the subject of legalizing these bonds is not "*clearly expressed in its title.*" The title of the act is, "an act to legalize the proceedings of the city council of the City of Plattsmouth *in reference to the construction* of a High School building, and to authorize the city council to *complete* the same." The act

proceeds with a statement of the issuing the bonds, the commencement of the work on the building, and the appointment of superintendents thereof, and Section 1 provides: "That all acts and proceedings of the city council of said City of Plattsmouth, in relation to issuing said bonds and letting the contract for the construction of said High School building, and the appointment of said C. F. Driscoll and M. L. White to superintend the construction of the same, and all matters and proceedings connected therewith which may, in any way affect the validity of said bonds or of the contract for the construction of said school house be, and the same are hereby legalized, confirmed and made valid in law."

Sec. 2 empowers the council to proceed to completion of the building. Sec. 3 provides, that all funds in the hands of the treasurer realized from sale of bonds, shall not be appropriated to any other purpose.

It is apparent that the act covers two subjects; one, the ratifying of the bonds, and the other the giving of authority to the city to erect the school building; but the objection which we chiefly urge is that the subject of legalizing the bonds is not *clearly expressed in the title.*

From the reading of the title no one would suppose that the act contained a proviso legalizing the bonds which had been previously issued and sold, but that it only related to the *construction* of the building.

When an act authorizes something to be done as indicated by its title, and also contains a provision ratifying some-

thing which has *already been executed,* and which is not clearly expressed in its title, such part of the act is unconstitutional. Such was the question in *White vs. Lincoln,* 5 Neb., 515. The title of the act in that case read, "An act to amend an act to incorporate cities of the second class and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned."

Sec. 3 of the act provided "That in all cases in which cities of the second class have collected and expended for the use and benefit of such cities, either in works of internal improvement, or otherwise, moneys collected from licenses for the sale of intoxicating liquors, such expenditures are declared to be legal, and the same is hereby ratified and confirmed, and such cities of the second class are hereby exonerated from any and all liability therefor." As there was nothing in the title of the act to indicate what this section contemplated, it was held to be unconstitutional.

This view is also sustained by the case of *Town of Fishkill vs. F. & B. Plankroad Co.,* 22 Barb., 634, cited in plaintiff's brief. The title of the act was "An act to release the Fishkill and Beekman Plankroad Company from the construction of part of their road and for other purposes," and contained eight sections. The first released the company from building a part of the road. The second authorized an abandonment of a part of the road, and the third regulated the terms of the abandonment. The next three authorized the company to relay the road with gravel, &c. The seventh *legalized all the preliminary acts in the organization of the company,* &c. The Court say, "No one would be informed or

proceeds with a statement of the issuing the bonds, the commencement of the work on the building, and the appointment of superintendents thereof, and Section 1 provides: "That all acts and proceedings of the city council of said City of Plattsmouth, in relation to issuing said bonds and letting the contract for the construction of said High School building, and the appointment of said C. F. Driscoll and M. L. White to superintend the construction of the same, and all matters and proceedings connected therewith which may, in any way affect the validity of said bonds or of the contract for the construction of said school house be, and the same are hereby legalized, confirmed and made valid in law."

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This view is also sustained by the case of *Town of Fishkill vs. F. & B. Plankroad Co.,* 22 Barb., 634, cited in plaintiff's brief. The title of the act was "An act to release the Fishkill and Beekman Plankroad Company from the construction of part of their road and for other purposes," and contained eight sections. The first released the company from building a part of the road. The second authorized an abandonment of a part of the road, and the third regulated the terms of the abandonment. The next three authorized the company to relay the road with gravel, &c. The seventh *legalized all the preliminary acts in the organization of the company,* &c. The Court say, "No one would be informed or

led to suspect by the restricted title of this act, that it contained sections conferring upon this corporation some peculiar and extraordinary privileges, or that it was designed to discharge defendants from their past acts and engagements, and not merely to relieve them from incurring further expenditures and responsibilities in future. It would seem, therefore, that such a statute is in conflict with the *spirit* and *intention* as well as *the letter of the constitution in this respect.* For these reasons, I find myself, with some hesitation and reluctance, constrained to declare the whole of the act, except the first section, unconstitutional and void."

When the courts say that different provisions or matters may be joined in the same act, they mean only that such can be done when expressed in the title; but a restricted title does not permit of different provisions and matters not expressed in it, even though germain to the act. See cases cited; also, *Smails et al. vs. White,* 4 Neb., 353, and *The State, ex rel., Jones vs. Lancaster Co.,* 6 Neb., 474.

The language of the Nebraska Constitution is more specific than the constitutions of most other states, in this, that it contains a qualifying word rendering the construction more stringent, in that it uses the words "*clearly* expressed in the title." The Supreme Court of our state have declared this provision mandatory, and have given it a very strict construction. (See cases previously cited.)

*The fourth objection* is, that the curative act relied on in plaintiff's petition and passed Feb. 18, 1873, is void and of no effect, in this, that said defendant had no authority to issue said $25,000 in school bonds in the first instance, and

the Legislature could not, by a special law subsequently passed, confer such power, and could not so confirm and ratify such illegal exercise of authority by said defendant, and bind defendant thereby, and that said defendant did not consent to be so bound by said act of the Legislature."

We do not mean by this answer that the Legislature has no power to pass curative acts, but rather that curative acts may be passed to cure *defects* in authority and irregularities only, and can not be passed to confer an authority *in toto*, or to legalize bonds which had been issued without *any authority* whatever, as in the present case.

"*Curative laws may heal irregularities in action, but they cannot cure a want of authority to act at all.*"--Cooly on Taxation, 227.

In *Commissioners of Shawnee County vs. Carter*, 2 Kans., 134–5, Kingman, J., says: "The act differs from those retrospective laws which are frequently passed, supplying *defects* and curing *informalities* in the proceedings of officers and tribunals acting within the scope of their authority. The County Commissioners were not acting within the scope of their authority in issuing these bonds. They did not conform to the law *only* in an irregular way, but they broke down the barriers which the law had raised in a very regular way; and their acts in the premises were void, not for want of any formality or regularity, or mistake as to time, or otherwise, but for want of power under the law."

In *Hasbrouch vs. Milwaukee*, 13 Wis., 46, Dixon, C. J., says: "A contract void for want of capacity in one or both the

contracting parties to enter into it, is as no contract; it is as if no attempt at an agreement had ever been made. And to admit that the Legislature, of its own choice and against the wishes of either or both the contracting parties, can give it life and vigor, is to admit that it is within the scope of legislative authority to divest settled rights of property, and to take the property of one individual or corporation and transfer it to another. It is certainly unnecessary at this day to enter into an argument or to cite authorities to show that under a constitutional government like ours the Legislature has no such power."

In *Barton Co. vs. Walser*, 47 Mo., 203, the court say: "But there is a broad line of distinction to be drawn between acts done *without authority*, and which are absolutely void, *ab initio*, and acts done under authority, and which are *irregularly* and *informally* done."

Daniel on Negotiable Instruments, vol. 2, Sec. 1563, in sn speaking of these cases says: "These cases seem to us to strike the true line of demarkation of legislative power." Kent, in Commentaries vol. 1, side page 455, has neatly expressed the rule thus: "A retrospective statute effecting and changing vested rights is very generally considered, in this country, as founded on unconstitutional principles, and consequently inoperative and void." * * * * * * * but this doctrine does not apply to statutes which "only go to confirm rights already existing, and in furtherance of the remedy, by curing *defects* and adding to the means of enforcing existing obligations."

Ryan C. J., in *Kimball vs. Town of Rosendale*, 42 Wis., 407, says: "*Perhaps the true limit of the curative power of the legis-*

*lature as gathered from all the authorities and sanctioned by principle is, or ought to be, that it can reach things voidable only, not void; defects of execution only, not of authority or jurisdiction and is confined to defective proceedings under previous legislative authority.*"

*People vs. Goldtree*, 44 Cal., 323.

*A. & N. R. Co. vs. Maquilkin*, 12 Kans., 305.

We believe this direct question has not come before the Supreme Court of the United States. There are several cases in which the language used by that court is somewhat general, but an examination of the facts in the cases, and of the opinions of the court, as applied to the facts, will show that the court has only decided that some defect in the authority, or some irregularity in the manner of executing it, may be cured by a subsequent law.

In *Gelpcke* vs. *Dubuque*, 1 Wall., 220, there was a law giving Dubuque authority to issue the bonds, but the statute was not explicit, and the court only held that its *defects* could be cured by subsequent legislation.

In *Thomson* vs. *Lee County*, 3 Wall., 231, the power to issue the bonds existed, but the power had been irregularly executed and the court say: "If the legislature possessed the power to authorize the act to be done, it could, by a retrospective act, cure the evils which existed, because the *power thus conferred* had been *irregularly executed.*"

In *Beloit* vs. *Morgan*, 7 Wall., 623, the supervisors of Beloit, by an act of 1853, had the power to subscribe to the capital stock of a certain R. R. Co. The bonds were not issued in

conformity to the law, and by an act of 1856, the bonds were confirmed and the court say: "The ruling has been, that in cases of bonds of Municipal Corporations, *under a statute upon the subject*, ratification by the legislature is in all respects equivalent to original authority and cures all *defects* of power, if such defects existed, and all *irregularities* in the execution."

*St. Joseph Township vs. Rogers*, 16 Wall., 664, was the case of a statute to cure *informalities* and *defects* in the election for the issuing of the bonds.

Other cases might be cited, but these are enough to illustrate what we mean, and they do not hold that a curative act can make valid a bond which has been issued without a shadow of authority, and therefore are not in conflict with the view of the law, we have advanced.

*The fifth objection* is that the act of 1875 legalizing certain bonds does not aid the plaintiff's case, for that act only pretends to legalize bonds "issued under a *general* or *special* law providing therefor."

The act may be found in the session laws of 1875, page 205, and is as follows:

"AN ACT to amend an act to incorporate cities of the second class and to define their powers, approved March 1, 1871, and to legalize certain taxes therein mentioned.

"*Be it enacted by the Legislature of the State of Nebraska:*

"SECTION 1. That no tax heretofore levied in any city of the second class shall be held to be invalid, illegal, or irregular, because the same was not levied within the time

prescribed by the law in force when the same was so levied; nor on account of any mere irregularity in the time, or manner of assessment of property, or other irregularity or omission not affecting the equality or substantial justice of such tax, and such taxes shall be inserted in the tax list, and shall be collected in the same manner as other general taxes are.

"SEC. 2. That all bonds heretofore issued by any city of the second class in good faith for the erection of, or to procure the means for erecting a high school building within such city, or for heating or furnishing the same, whether issued under a general or special law providing therefor, or any bonds hereafter issued by such city in exchange for any such bonds, shall be legal and valid; and any tax heretofore or hereafter levied to pay the interest or a portion of the principal of any such bonds, not exceeding five mills on the dollar valuation of the taxable property in the city in any one year, shall be legal and valid.

"SEC. 3. That in all cases in which cities of the second class have collected and expended for the use and benefit of such cities, either in works of internal improvement, or otherwise, moneys collected from licenses for the sale of intoxicating liquors, such expenditures are hereby declared to be legal, and the same is hereby ratified and confirmed, and such cities of the second class are hereby exonerated from any and all liability therefor.

"SEC. 4. This act shall take effect and be in force from and after its passage.

"Approved February 25, 1875."

Section 2 does not legalize *all bonds* that may have been theretofore issued by a city of the second class, but only such bonds as have been "*issued under a general or special law providing therefor.*" The bonds in suit were not issued under a *general or special law* providing therefor, but were

issued without authority of law, hence this act does not pretend to legalize them.

If a precedent be needed for this construction, it will be found in *Williamson vs. The City of Keokuk*, 44 Iowa, 92, wherein the court say:

"It is further urged by appellant that the bonds in question were legalized and made valid by chapter 258 of the acts of 1857. An examination of the provisions of this act shows that it does not purport to legalize generally bonds before issued by Lee and Davis counties and the cities and towns therein. Its provisions were simply intended to cure defects in the mode of submission and taking the vote. This is fully apparent from the whole chapter taken together. It seems to assume that the authority to vote such bonds existed, and hence it does not undertake to legalize an act done without such authority, but merely provides against the effects of an irregular or improper submission or vote. This, then, being the effect of the act, it does not legalize these bonds, which we have found were voted without any authority of law."

If this section was broad enough in its language to legalize bonds issued *without authority of law*, then it would be obnoxious to the authorities heretofore cited, as being beyond legislative power.

Section 2 of this act of 1875 is obnoxious to Sec. 19, Art. 2, of Constitution of 1867, which provides: "No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived or amended,

unless the new act contain the entire act revived, and the sections amended; and the section or sections so amended shall be repealed."

The legalizing of bonds is a subject not clearly expressed in the title of this act. *White vs. Lincoln*, 5 Neb., 515. *Town of Fishkill vs. F. & B. Plankroad Co.*, 22 Barb., 634. *Smails et al. vs. White*, 4 Neb., 353. *The State ex rel. Jones vs. Lancaster Co.*, 6 Neb., 474. *Hamlin vs. Meadville*, 6 Neb., 234.

Section 3 of this act was held unconstitutional in *The City of Tecumseh vs. Phillips*, 5 Neb., 310. The court say: "It will be noticed that the title to this act purports to have two objects in view: *first*, to amend the general incorporation law for cities of the second class, and *second*, to legalize certain taxes; but we fail to discover wherein it is, in any particular, amendatory of the general act relating to cities of the second class. The first section is devoted entirely to the legalization of certain taxes, supposed to have been illegally levied. The second section relates to the legalization of all bonds issued by any city of the second class, etc., and the third section is devoted entirely to the exemption of any such city from liability for license moneys illegally withheld from the school fund, 'and expended for the use and benefit of such cities, either in works of internal improvement, or otherwise.'

"It would seem to need no argument to show that this third section of the act is not, even by the most liberal construction, included in the title to the act. It is in no wise amendatory of the general incorporation law for cities of the second class, nor does it make any allusion to the legalization of any taxes whatever. And it is very clear to our

minds that the section is obnoxious to that provision of the constitution, in force when the act was passed, which declares that 'no bill shall contain more than one subject, which shall be clearly expressed in its title,' etc.—Sec. 19, Art. 2, Constitution of 1866. To hold otherwise, would be to ignore entirely the plain requirements of this wholesome provision of the fundamental law."

The reasons here urged against Sec. 3, will apply with equal force against Sec. 2, as containing a subject not clearly expressed in the title of the act.

If this act be "in any particular amendatory of the general act relating to cities of the second class," yet that part of the title is not broad enough to cover Section 2.

In *Williamson vs. The City of Keokuk*, 44 Iowa, 88, the court consider an act entitled, "an act to amend the charter of the City of Keokuk," and say:

"But the ninth section is in no sense an amendment of the charter. It is an attempt to legalize and make valid certain acts of the city council, and certain elections held by the people. This is neither embraced in the title of the act, nor is it germane to anything contained therein."

If this act is to be treated as an amendment of the act of March 1, 1871, as its title purports, then it must fall for the further reason that it is obnoxious to that part of the constitution, above cited, which requires the new act to contain the entire sections as amended. No section of this act purports to amend any particular section, or to set out any section as amended, of the act of March 1, 1871.

If the sections of this act of 1875 are in fact amendatory of the act of 1871, even though they may not purport so to be, still they would be unconstitutional in that they do not contain the sections so amended. *Smails vs. White*, 4 Neb., 353.

*Ryan vs. The State*, 5 Neb., 280, is a case where an act attempted to amend the revenue laws "*without inserting in the new law the sections so amended and remodeled, and without making any particular reference to them*," as in the law we are considering, and the court held the law unconstitutional, saying, "*The constitutional provision requires all the parts of an amended law to be contained in the new act, and the old law so amended to be repealed.*"

It will be seen that Sec. 1 of act of 1875 is clearly amendatory of the law fixing the time when taxes shall be levied, in that it provides that taxes shall not be invalid "*because the same was not levied within the time prescribed by the law in force when the same was levied*," and "that such taxes shall be inserted in the tax list," etc.

"But where the act is not complete in itself, but in its effect is simply and clearly amendatory of a former statute, it falls directly within the constitutional inhibition, and is void." *Soverign vs. The State*, 7 Neb., 413. *Smails vs. White*, 4 Neb., 357. *Ryan vs. The State*, 5 Neb., 280.

Such amendatory act must contain a clause repealing the sections so amended, or it is void. So in this case. *Lancaster Co. vs. Hoagland*, 8 Neb., 37.

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